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GILBART LECTURES, 1899*

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

THE legality or illegality of a custom does not depend on statute alone.

There is the common law to be reckoned with. And though, as I have shown you, the common law is now to be regarded as a progressive system, assimilating to itself universal customs as soon as they are ripe for the process, so that where you find a universal custom you may treat it as part of the law merchant or common law without waiting for the decision of a court, and though the standard thus set up may be a more liberal one and might authorise a trade or business custom which might have failed to pass the other standard; notwithstanding all this, still even the modern common law exercises a restraining influence over the assertion of new customs of trade or business, at any rate when they are put forward as binding outsiders.

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What, then, are the relations between this common law and the customs of a trade or business? The text books generally tell us the custom of a trade or business must not be contrary to the general law. But they generally say the same thing about the universal customs of merchants, and quote *Crouch v. the Credit Foncier* as an authority for both propositions; so that does not help us much. Or they mix up in a provoking manner the consideration of this point, and the further one of the reasonableness of the custom. They may cover the same ground, but I should like, if I can, to keep them separate.

And we may start from this. The custom of one section of the mercantile community cannot alter the common law, including therein the law merchant, nor can it add thereto. The customs of bankers, as I said before, cannot be put on the same footing as the universal customs of merchants. You may be the Lords or the Commons, whichever you like, but you are not the whole mercantile legislative body.

So we must take this common law as we find it.

Then how far are we bound by it? How far can we counteract or circumvent it by a custom, as against outsiders? Now here I think we must discriminate to some extent. To my mind, the general or common law is that which applies absolutely to all sorts and conditions of men within the realm; it is constituted of general rules affecting the whole community, when it absorbs a custom of merchants that binds everybody, merchant or not; where you have a bill case between a guardsman and a money-lender, the rules of the common law and law merchant apply just as they would between two banks.

This common law and these rules exist independently of the Courts; their enunciation by the Courts only affords them, so to speak, recognition or publication. But when laid down by the Courts, or even without that sanction, this, which I shall call the real general common law, is as efficacious, as imperative, as statute law. As we have seen, even universal custom of merchants cannot repeal it, or claim validity where it contravenes it. And you cannot put the case of custom of a trade higher than universal custom.

So I think we may take it that any custom of a trade or business which ran directly counter to the rules of this general common law could not hold water.

For instance, these rules stigmatise certain things not exactly as criminal, but as immoral or undesirable, on grounds of public policy. No custom would validate a contract obnoxious to the common law on those grounds.

These rules further impose disabilities, as on infants, married women, and the like. No custom could give effect to any dealing which ignored, or sought to obviate, such disabilities.

But outside all this there seems to me to be a region where custom of a particular section of the mercantile community may, and does, operate freely.

A good many people seem to think that, whenever you get two or more judges together, every word they say, whatever may be the subject they are dealing with, is to be taken as laying down common law. That I do not believe. The fact is, as I have above suggested, that it is only when the rule laid down is of universal application that it ranks as general law. When the decision goes further, when it applies the rule to a particular class of the community, then so far as it ceases to be of general application, it ceases to be an exposition of the common or general law, it forms no part thereof, and is not entitled to the same respect or obedience.

This seems to me to be the proper conclusion from authorities which I have carefully considered. Or you may possibly explain the position by saying that though you do not dispute the rule as laid down, you avoid the consequences by custom, as you might do by express contract, and you practically contract yourself out of the resulting liabilities. The latter contention seems, however, running very near the rule that custom must not infringe the general law, and I prefer the other argument.

Be this as it may, the fact remains that wherever a particular rule of the general law is so applied by the Courts as to weigh hardly upon a particular section of the mercantile community, that section may within reasonable limits redress the balance by setting up a custom which may bind even outsiders and relieve that section of the mercantile community from the hardship which would otherwise accrue.

The sort of idea seems to be that so long as the law does not invade your particular domain, you must not trespass over its boundary; if it makes an incursion on you, you may protect yourself and repel it.

I can give no other meaning to the judgment of Lord Esher, which I am about to quote, and Lord Esher's authority is, in my opinion, a high one.

And I will only preface that judgment by asking you to observe also the limitations he imposes on such customs when it is sought to bind outsiders by them.

Lord Esher, then Mr. J. Brett, was advising the House of Lords in the case of *Robinson v. Mollett*, in 1875, and his judgment, or opinion, was practically adopted by the House of Lords. His whole judgment, or opinion, is so instructive and good that I should like to read it *in toto*, but it is too long, and I must therefore content myself with extracts and summaries. The learned judge said: "A very large question is opened, "which is, what is the proper measure or limit of the control of "mercantile customs by the law? That the course of mercantile business should be left to be as free as possible seems to "me to be beyond doubt. That it is subject to some control is "especially undoubted. It is when merchants dispute about "their own rules that they invoke the law. The Courts, therefore, being appealed to, have been obliged to apply some rule. "When merchants have disputed as to what the governing rule should be, the Courts have applied to the mercantile business brought before them what have been called legal principles, which have almost always been the fundamental ethical "rules of right and wrong. They have decided in favour of "that course of business which was in accordance with such "principles or rules, and against that course which was inconsistent with them."

The rules Lord Esher here speaks of are not, of course, customs or rules of a particular trade or business, but the general rules or doctrines of the common law and law merchant. Of the customs or rules of a particular trade or business he proceeds to speak as follows:—"But when once rules are laid "down, they must at some time become irksome to some individual or to some body of men. And there must from time to

"time be some contention raised, or some course of business "invented, which is alleged to be an attempt to break through "them. The Courts are then again appealed to. Customs of "trade, as distinguished from other customs, are generally "courses of business invented or relied upon in order to modify "or evade some application which has been laid down by the "Courts of some rule of law to business, and which application "has seemed irksome to some merchants. And when some "such course of business is proved to exist in fact, and the "binding effect of it is disputed, the question of law seems to "be, whether it is in accordance with fundamental principles of "right and wrong. A mercantile custom is hardly ever invoked, "except when one of the parties to the dispute has not, in fact, "had his attention called to the course of business to be "enforced by it; for if his attention had in fact been called to "such course of business his contract would be specifically "made in accordance with it, and no proof of it as a custom "would be necessary. A stranger to a locality, or trade, or "market, is not held to be bound by the custom of such locality, "trade or market, because he knows the custom, but because "he has elected to enter into transactions in a locality, trade, or "market wherein all who are not strangers do know and act "upon such custom. When considerable numbers of men of "business carry on one side of a particular business they are "apt to set up a custom which acts very much in favour of their "side of the business. So long as they do not infringe some "fundamental principle of right and wrong, they may establish "such a custom; but if, on dispute before a legal forum, it is "found that they are endeavouring to enforce some rule of con-"duct which is so entirely in favour of their side that it is "fundamentally unjust to the other side, the Courts have always "determined that such a custom, if sought to be enforced "against a person in fact ignorant of it, is unreasonable, con-"trary to law, and void."

Now, that has always struck me as a clear and masterly exposition of the nature and use of trade customs and the principles on which, and the limits within which, the Courts will give effect to them or not, as against outsiders.

Lord Esher puts the test much the same way when he

applies it to the case before the House, which was whether a particular custom of the London tallow market could bind a Liverpool merchant dealing on that market through a London tallow-broker. "The question," he says, "in the present case "is whether the alleged custom is not too much in favour of the "brokers who set it up, and whether it does not pass beyond "due freedom and degenerate into injustice. If the custom "which exists in fact is not unjust as against principals ignorant "of it, your Lordships will uphold it, however much it departs "from the rules hitherto recognised by the Courts as applicable "to the contract of employment between principals and brokers; "but if it so far breaks from those rules as to be unjust to such "principles in such contract, your Lordships will pronounce it "to be void as a custom."

I will only supplement this judgment by an extract from one delivered ten years later by Lord Esher, when he had become Master of the Rolls. "The Courts," he says, "have "always taken upon themselves to consider whether a custom "is or is not within the bounds of reason, and, if the custom is "unreasonable, the Courts have said they will not recognise it "as binding on people who do not know it and who have not "consented to act upon it."

This emphasizes what is really deducible from the other case, viz., that apart from all other considerations the ultimate test of a custom alleged to bind outsiders is "Is it reasonable?"

Now, of course, as I have said, it is much easier, it is more obviously fair to fix the outsider with customs of a definite market than with the customs of a body having no one central place of trading. It is easier to fix him with the customs of the Stock Exchange or the tallow market than with those of bankers. But the principle is the same; customs of the shipwrights of London have been maintained as against outsiders, and I am willing that, subject to the specific exceptions I have mentioned, such as illegality by statute or direct antagonism to general law, the criterion applied by Mr. J. Brett should stand as the test of every established custom of bankers by which it is sought to bind customers. Is it fair to the other side, is it reasonable, would the Courts say it was made too much in the interests of the bankers or was unreasonable?

In applying this test to the question under consideration in *Mollett v. Robinson*, the judges and the House of Lords afford us one other guide. It is only part of the same principle, it is only enunciating a particular form of unfairness or injustice sought to be imported by custom, it is only an example of the general rule. It is this, that though a custom of trade may control the mode of performance of a contract, it cannot alter its intrinsic character. As Brett, J., puts it, "Is the custom "relied on so inconsistent with the nature of the contract to "which it is sought to be applied as that it would change its "nature altogether, or as to change its intrinsic character? If "it would, it is unjust as against the outsider, and therefore it is "void; if it would not, it should be allowed to prevail." And the judgment of the House of Lords was that, as the usage was of a peculiar character and at variance with the relations of the parties, no person ignorant of such usage could be held to have agreed to submit to its conditions merely by employing the services of a broker, to whom the usage was known, to perform the ordinary duties belonging to such employment.

So that we get a specific definition of one class of customs which the Courts will never recognise as reasonable, viz., customs which affect not merely the mode of carrying out the contract, but alter its character or the relations of the parties to it.

The personal application of these tests to the various customs of bankers which have from time to time been suggested to meet difficulties, I must leave mainly to you. Some seem to fall under its condemnation, others to escape it.

For instance, I do not see how you could set up any custom restricting your liability for misdelivery of your customer's goods entrusted to you for safe custody. There is, of course, the initial difficulty that such a custom would be difficult to establish from the comparative rarity of the occurrence. But suppose a sufficient number of cases had occurred, and in each the customer had acquiesced in such alleged custom, and on being satisfied that there had been no negligence on the part of the bank, had relinquished his claim, I still think that if a recalcitrant customer brought the matter before the Courts, they would decline to

recognize the custom, on the ground that it altered the intrinsic nature of the contract, was too much in favour of the banker, and so unreasonable and invalid.

Or an instance on the other hand; a custom of bankers to treat cheques entered to credit before cleared as still being held for collection only, and not as making the banker the holder thereof for value, with no remedy against the customer unless he has endorsed. Such a custom would be an evasion, to say the least of it, of the rules of law laid down in *ex parte Richdale* and *Royal Bank of Scotland v. Tottenham*, but I should by no means despair of upholding the validity of such custom, if sufficiently proved, though possibly the origin of such custom would have to be alleged as subsequent to these two cases.

So again the right of bankers to charge interest on overdrafts. There is no right at common law to charge interest on an ordinary debt unless stipulated for, but if such right on the part of bankers were disputed, it would be supported and unquestionably sustained on the ground of custom.

Now, the next thing to which we have to look when we want to get out of the ordinary results of a contractual relation is course of business. Course of business covers rather a different field from custom. Course of business cannot affect a new-comer, he must be an old customer. Course of business can only arise from previous transactions. In its own domain it is, however, a powerful factor. Its efficacy is based on the theory that as things are they will remain, till notice is given that they are to be altered for the future. It is a reasonable basis; if you have gone on for a considerable period dealing with a man on a particular footing as to the method of keeping accounts, of extending credits, allowing overdrafts as against uncleared cheques or bills not yet due, or anything of that sort, common fairness suggests that you should not be at liberty to break off the whole thing at a moment's notice and leave the other party to meet, as best he may, engagements which he has contracted on the faith of the permanence of such course of dealing. You remember that case of *Buckingham v. the London and Midland Bank*, as to transferring the balance of a customer's current account to a loan account, the two having always been kept separate, closing the current account, and refusing to honour cheques, even the

outstanding ones. Now that was a clear case where a course of business forbade such a course, and the Commercial Court so held.

That course of business bound the banker, but the principle cuts just as much the other way and in the banker's favour. Say you have habitually charged a customer with interest on overdraft or advances, with periodical rests, in other words, with compound interest, and he has acquiesced in accounts showing such charge; a course of business is thereby established which raises the presumption that the same system is to be pursued so long as the relationship of banker and customer remains with regard to that account, and during that period, therefore, you would be entitled to claim and recover such compound interest.

Observe that I say "so long as the relationship of banker "and customer continues with regard to that account." It is an essential feature of all courses of business that the particular business relation should continue uniform and unaltered throughout the whole sequence of dealings from which it is sought to imply, and to which it is sought to apply, this doctrine. Obviously this is right; presumptions from past transactions can only apply to subsequent ones where the circumstances and conditions are identical; a presumption as between banker and customer can only apply so long as that relation exists. If, therefore, that relation ceases with regard to an advance or overdraft on which compound interest is charged; if by taking a mortgage security for it you convert yourself from banker into mortgagee and the debtor from customer into mortgagor, the presumption, the course of business, comes to a short end, and though you might still keep the account in your books you would only be entitled to the rate of interest the mortgage secured to you, and could only reckon that interest in the same way as if you had simply been mortgagee from the beginning, and never banker at all.

I cannot see that, within its somewhat limited sphere, the efficacy of course of business is to any material extent hampered by the considerations of reasonableness affecting the validity of custom of which we previously spoke.

True, both are means of implying a contract, but, in the case of course of business, the element of knowledge of the con-

tracting party is assumed from his acquiescence in the prior transactions, whereas in the case of custom this element is admittedly lacking. You are planting on a man a contract which is pretty much of your own making, and so you must show it to be reasonable. But once get in the idea of his conscious acquiescence, and reasonableness has nothing to do with the matter. As Jessel, M.R., once said, "A man has a perfect "legal right to make a fool of himself."

I do not know that it has ever been laid down how long a course of business must continue in order to found the presumption that dealings are to proceed on the same basis and system for the future. I think it would be a question of fact to be decided on the circumstances of each particular case. But I take it there must be something which could reasonably and fairly be described as a *course* of business. I do not think an isolated transaction here and there, perhaps sandwiched in among a lot of other business, could be so described or give rise to any rights. But, given such a course of business, I can see many points on which this idea of course of business may help bankers over difficulties, either by itself or alternatively with the custom of bankers. For it is not, to my mind, in any way confined to mere keeping of accounts, as some people seem to have imagined. I have been careful not to so state it to you. The deduction is, as I say, that business shall be carried on on the same principles as heretofore, so long as the original relations remain undisturbed, and this covers a good deal more than accounts.

Take the instance of the banker crediting the uncleared bearer cheque which is returned dishonoured. If it is the first time such a thing has happened with regard to that particular customer, and he objected to being debited with the cheque, the banker would have to rely on the custom of bankers; but if the same thing had happened before and the customer had acquiesced in the cheque's being returned to him and entered to his debit, then the banker might in addition set up course of business.

And, lastly, as helping the banker over legal stiles, we get implied contract. I have not much faith in this doctrine, as I dare say you know. The Courts are extremely shy of applying it, and never do so save in very exceptional cases and within the strictest limits. I fancy I have told you something about

this before. In order to imply any stipulation in a contract beyond that which the parties have agreed, the following conditions must exist. It must be perfectly clear to every reasonable man that such a stipulation is what both parties must have intended. No term can be implied which is not reasonably necessary to carry out the intention of the parties. The Court has no right to imply in a written contract any stipulation unless, in considering the terms of the contract in a reasonable and business manner, an implication necessarily arises. There must, from the language of the contract itself and the circumstances under which it is entered into, be such an inference that the parties must have intended the stipulation in question, that the Court is necessarily driven to the conclusion that it must be implied.

These are some of the slightly differing, but substantially identical, terms in which the principle has been laid down by the Courts. Another case recognises that the implication may extend so as to impose a duty on either party, if such implication and the existence of such duty be absolutely essential for the commercial efficacy of the contract.

And it is obvious that the principle is at least as applicable to unwritten as to written contracts. Indeed, it is more reasonable to import a term or a stipulation, where the other terms are not reduced to writing, than where they are.

But, after all is said and done, the cases in which this doctrine of implied contract can be practically applied are few and far between. Where the results of a contract or relation are regulated by law it is hard to say those results or consequences are so unreasonable that the parties must of necessity have contemplated something else. This would be very like supplying the place of custom by implied contract. Where implied contract really comes in is, I think, where there is some collateral matter without which the contract cannot have a proper business efficacy and as to which the parties would have infallibly agreed specifically, if it had not escaped their notice. Suppose, for instance, you took a room or a window, at an enormous rent, paid in advance, to see the Jubilee procession in 1897, and the Jubilee procession, for some reason or another, had not taken place, I think a Court would have implied a term by which you

could have got your money back. But, as I told you before, I do not believe an implied contract could be invoked to relieve the banker of the natural consequences of misdelivery or conversion of his customer's goods and put it on the same footing as loss thereof. There is no necessary inevitable deduction that the parties would have made such a term had they thought of it; most probably one of them, the customer, would have strongly objected to so doing.

Now, this concludes my review of the methods in which the ordinary consequences of contracts or relations may be added to or modified. It has run to greater length than I anticipated, but such subjects as the law merchant, custom, usage, course of business, and implied agreement, are not to be dealt with lightly or shortly, and I hope we have arrived at a better comprehension of what they can and cannot do.

I dare say you will have noticed that neither custom, course of business, nor implied agreement ever goes so far as to contradict the express agreement of the parties. Any one of them may annex incidents thereto, or may possibly vary the method of performance, but wherever the express contract and the alleged custom, course of business, or implied agreement come into direct conflict, the former will prevail as between the immediate parties.

The influence of local customs, such as counting 120 rabbits or herrings as 100, is not really an exception; it is merely the application of an interpretation contemplated by both parties, just as if they had used a foreign term and a dictionary had been referred to to ascertain their meaning.

Now, the next point I want to deal with follows naturally on this, inasmuch as it also concerns the conflicting claims of two classes of contracts, those which are in writing and those which are oral or by word of mouth.

Now, it is a general and established rule of law that, when once a contract is reduced into writing, that writing must be taken to express the final agreement of the parties on all the matters dealt with therein. All prior negotiations are wiped out, and you cannot set up against the terms of the written contract any verbal contract made prior to or cotemporary with the written one which contradicts it or alters its effect. Now, of

course, this is in itself a fair and a salutary rule; it would never do when a man had put his hand to a written contract to have him setting up something alleged to have been agreed to at the time in order to get out of the contract. And the correlative rules make the main one more distinctly reasonable. For, if the written contract does not purport to contain all the terms, you can generally supply the others by word of mouth; you can, after the written contract is executed, vary it by word of mouth unless the subject matter is such that the law requires it to be in writing, as it does bills and notes; you can, with regard to most written contracts, though not with regard to bills, renounce or waive your rights thereunder or any particular stipulation by word of mouth and so on; but where the law definitely puts down its foot is where any attempt is made to set up a verbal contract made before or at the time of a written one, what is called a prior, or cotemporary oral contract, in order to contradict or vary the terms of a written one. Now, as I say, this is a sound and beneficial rule, but it seems to work rather hardly in some cases. Take the case of a promise to renew a bill at maturity, the case which recently came before the Court of Appeal in the case of *The New London Credit Syndicate v. Neale*, 1898, 2 Q.B., 487, in which this doctrine was discussed and upheld. A man gives a bill or promissory note payable at a fixed date, but before doing so he distinctly stipulates, and the other party distinctly promises, that he will at maturity renew the bill or note, say, for another six months. Now, if that agreement is put into writing, that is all right as between the original parties, at any rate; possibly as against a third party taking with notice or without value.

But suppose such agreement is not in writing, but merely verbal. Then it is clearly settled that the rule applies that the oral agreement cannot be set up and affords no defence whatever to an action on the bill or note at the date of maturity. Now, this does seem a little hard, and various plans have been tried with a view to circumventing the hardship.

It has been contended that the oral agreement does not contradict the written one; but it does, as is really shown by its being set up as a defence to it. The bill or note makes the sum payable on a certain date; the oral agreement seeks to make it

not payable then, but at another date, so it contradicts or varies the written agreement just as much as if the bill was for £100 and an oral agreement that only £50 should be paid were put forward. Then it has been suggested that this was a case in which equity would step in between the immediate parties and prevent the plaintiff enforcing the written agreement in direct violation of his verbal promise. And if equity meant in all cases what it means in ordinary language, namely, fairness, one might have expected that equity would have done something to remind the holder of the bill that his word was, or ought to be, as good as his bond. But equity never really was more than an aggravated form of law, with different and more complicated rules and a higher scale of costs, and so the equity judges said, "No, this "is a rule of evidence that the oral evidence is not admissible "to contradict or vary the written document, and so we cannot "interfere." So that though now any Court is supposed to administer law and equity equally and indiscriminately, this defence would not avail the defendant who found himself sued on the bill, despite the oral agreement to renew.

Now, the circumstances in the case I have alluded to of *The New London Credit Syndicate v. Neale*, which was decided by the Court of Appeal on July 17th last year, were exceptional, inasmuch as there the plaintiffs were indorsees, who admitted that they had knowledge of the circumstances under which the bill was accepted by the defendant, viz., on an oral agreement, made at the time he accepted, that if he could not meet it at maturity the drawer would renew. So that while the indorsees could not, and did not, claim to stand on any better footing than the drawer, the acceptor was able to argue that the promise to renew involved a promise not to part with or negotiate the bill; that it was therefore negotiated in breach of good faith, and that therefore the plaintiffs, not being holders in due course, could not recover, founding his argument on sec. 29, sub-sec. 6 of the Bills of Exchange Act. So that really the indorsees were in a worse, not a better, position than the drawer, because there was this negotiation against them, which it was contended constituted a breach of faith on the part of the drawer. And the defendant's other contention was that the delivery of the bill was conditional only; conditional, I take it that is, either on its not being negoti-

ated or its being renewed at maturity; the report of the argument is not very clear. And these arguments prevailed with the Judge of first instance, who decided for the defendant. But the Court of Appeal took the opposite view, and gave judgment for the plaintiffs, the indorsees. And they were clearly right. The Bills of Exchange Act has not altered the rules of evidence, and this rule that evidence of a prior or contemporaneous oral agreement is not admissible to vary the effect of a written instrument was fatal to both the defendant's contentions. Take the case of the negotiation in alleged bad faith. But how could defendant show such breach of faith? Only by setting up the oral agreement to renew, and that he was precluded from doing. Then as to the conditional delivery. What condition was it on? An oral agreement to renew at maturity. But that is contradicting the terms of the bill; it is making it not payable at the time it specifies for payment, and that makes such evidence inadmissible.

Now, of course, there may be conditional delivery, which, save as against the holder in due course, affords a defence on the bill unless the condition is fulfilled. That is obvious from sec. 21, and was the law before the Bills of Exchange Act.

And, equally of course, the circumstances which make the delivery conditional and not absolute, are constituted or evidenced by something said before or at the time the bill is handed over. And at first sight the distinction that oral evidence is admissible in this case and not in the other, might seem an arbitrary one. Why, for instance, it might be asked, can the acceptor say that he gave the bill for the purpose of its being discounted or retiring other bills, and not that he gave it on condition that the drawer would renew it at maturity.

But the answer is this. So long as the verbal evidence is confined to the delivery, to showing that the bill was not to take effect as a contract at all until some condition is fulfilled, that evidence is admissible. The examples as to bills given for the purpose of being discounted or to take up other bills, have always been held to come under this head. And this view may be justified on several grounds.

The handing over of the bill is only provisional, the rea delivery is postponed until the moment when the bill is utilized for the specified purpose; or the person to whom it is handed

may be looked upon in the light of a bailee or agent, only holding the bill for a specific purpose and having no title himself, though able in fulfilment of the specific purpose to confer one. I think the latter is the more comprehensible view, and it seems to me the one aimed at by sec. 21, sub.-sec. 6 of the Bills of Exchange Act, which says, as between immediate parties, and as regards a remote party other than a holder in due course, the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. For it follows that if the bill is delivered to a person as agent or bailee, such delivery is not for the purpose of transferring, and does not transfer the property in the bill to him, any more than the delivery of a plate-chest to a servant to be taken to a banker's, or the receipt thereof by the banker for safe custody, makes either the servant or the banker the owner of the plate-chest. Lastly, the rule may be supported on the ground that oral evidence of conditional delivery does not contradict or vary the terms of the bill. I cannot say that I much appreciate that argument. If it is a note, it says, I promise to pay; if it is a bill, the acceptance means the same thing, and it is varying, if not contradicting, that written contract, if you set up a verbal agreement to pay on a certain condition or in a certain event, and not otherwise. So I think the other grounds I have enumerated are the far better ones to rely on.

But you can see the essential difference between such cases as these, and the case of a bill really delivered, albeit in reliance on the promise of the transferee to renew on maturity The bill is delivered, the property passes, it is delivered as, or as evidence of, an existing contract; it would suspend the remedy for a pre-existing debt, in respect of which it was given, which is not a bad test; you cannot suggest that there is any relation of principal and agent or of bailor and bailee in relation thereto. It is not really, even looked at apart from technicalities, a conditional delivery. It is delivered absolutely, such absolute delivery being induced by the verbal promise that at a future date the transferee will do something which would be unnecessary were it not that the bill is delivered absolutely and as a valid and existing contract.

I have had a good many of these cases to deal with, and I have always found this the truest test: Was the bill, when it left the acceptor's hands, or the note, when it left the drawer's hands, an existing contract? If so, oral evidence has nothing to do with it, and is inadmissible.

And I may as well state here again what I alluded to briefly before. I said you could, after execution of a written contract, vary the terms thereof by word of mouth, unless the contract were of such a nature that the law required it to be in writing.

Now, a bill by sec. 3 of the Bills of Exchange Act must be in writing, a cheque must be in writing because it is a bill, and a promissory note must be in writing by sec. 83.

Therefore there can be no verbal variation or contradiction of a bill, note, or cheque at any stage of its existence, even after full delivery. Nor can it be waived and the rights thereunder of the holder be abandoned, except by writing, or by the delivery up of the bill to the party primarily liable, which the Bills of Exchange Act, by sec. 62, constitutes an effectual discharge.

THE CURRENCY LAWS OF CANADA

THE subjoined compilation embracing the different Acts of the Dominion Parliament relating to the currency of the country has been prepared for publication in the JOURNAL in response to suggestions made by Associates. Its publication has been deferred until now for want of space.

AN ACT RESPECTING THE CURRENCY

(Chapter 30, R.S.C.)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Denominations in currency.

1. The denominations of money in the currency of Canada, shall be dollars, cents and mills, the cent being one-hundredth part of a dollar, and the mill one-tenth part of a cent. 34 V., c. 4, s. 2.

Standard of value of Canada currency.

2. The currency of Canada shall be such, that the British sovereign of the weight and fineness now prescribed by the laws of the United Kingdom, 4.86⅔ shall be equal to and shall pass current for four dollars eighty-six cents and two-thirds of a cent of the currency of Canada, and the half sovereigns of proportionate weight and like fineness, for one-half the said sum; and all public accounts throughout Canada shall be kept in such currency; and in any statement as to money or money value in any indictment or legal proceeding, the same shall be stated in such currrency; and in all private accounts and agreements rendered or entered into on or subsequent to the first day of July, one thousand eight hundred and seventy-one, all sums mentioned shall be understood to be in such currency, unless some other is clearly expressed, or must, from the circumstances of the case, have been intended by the parties. 34 V., c. 4, s. 3.

Public accounts, etc., to be kept in it.

No bank notes, etc., to be in any other currency.

3. No Dominion note or bank note payable in any other currency than the currency of Canada, shall be issued or reissued by the Government of Canada, or by any bank, and all such notes issued before the first day of July, one thousand eight hundred

and seventy-one, shall be redeemed, or notes payable in the currency of Canada shall be substituted or exchanged for them. 34 V., c. 4, s. 5.

Gold coins may be struck for Canada.

4. Any gold coins which Her Majesty causes to be struck for circulation in Canada, of the standard of fineness prescribed by law for the gold coins of the United Kingdom, and bearing the same proportion in weight to that of the British sovereign, which five dollars bear to four dollars, eighty-six cents and two-thirds of a cent, shall pass current and be a legal tender in Canada for five dollars; and any multiples or divisions of such coin, which Her Majesty causes to be struck for like purposes, shall pass current and be a legal tender in Canada at rates proportionate to their intrinsic value respectively; and any such coins shall pass by such names as Her Majesty assigns to them in her proclamation declaring them a legal tender, and shall be subject to the like allowance for remedy as British coin. 34 V., c. 4, s. 6.

Certain silver and copper coins struck by order of Her Majesty to be a legal tender throughout Canada.

5. The silver, copper or bronze coins which Her Majesty has heretofore caused to be struck for circulation in the provinces of Quebec, Ontario and New Brunswick, under the Acts then in force in the said provinces respectively, shall be current and a legal tender throughout Canada, at the rates in the said currency of Canada assigned to them respectively by the said Acts, and under the like conditions and provisions: and such other silver, copper or bronze coins as Her Majesty causes to be struck for circulation in Canada shall pass current and be a legal tender in Canada, at the rates assigned to them respectively by Her Majesty's Royal Proclamation,—such silver coins being of the fineness now fixed by the laws of the United Kingdom, and of weights bearing respectively the same proportion to the value to be assigned to them, which the weights of the silver coins of the United Kingdom bear to their nominal value; and all such silver coins aforesaid, shall be a legal tender to the amount of ten dollars, and such copper or bronze coins to the amount of twenty-five cents, in any one payment; and the holder of the notes of any person to the amount of more than ten dollars, shall not be bound to receive more than that amount in such silver coins in payment of such notes if presented for payment at one time, although any of such notes is for a less sum. 34 V., c. 4, s. 7.

Amount which may be tendered in one payment.

No other coins of silver or copper to be so.

6. No other silver, copper or bronze coins than those which Her Majesty causes to be struck for circulation in Canada, or in some province thereof, shall be a legal tender in Canada. 34 V., c. 4, s. 8.

As to foreign gold coins.

7. Her Majesty may, by Proclamation, from time to time fix the rates at which any foreign gold coins of the description, date, weight and fineness, mentioned in such Proclamation, shall pass current, and be a legal tender in Canada: Provided that until it is otherwise ordered by any such Proclamation, the gold eagle of the United States of America, coined after the first day of July, one thousand eight hundred and thirty-four, and before the first day of January, one thousand eight hundred and fifty-two, or after the said last mentioned day, but while the standard of fineness for gold coins then fixed by the laws of the said United States remains unchanged, and weighing ten pennyweights, eighteen grains, troy weight, shall pass current and be a legal tender in Canada for ten dollars; and the gold coins of the said United States being multiples and halves of the said eagle, and of like date and proportionate weights, shall pass current and be a legal tender in Canada for proportionate sums. 34 V., c. 4, s. 9.

Proviso: as to U. S. Eagle

Proof of date, etc.. of coins.

8. The stamp of the year on any coin made current by this Act, or any Proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year; and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being of the coinage of such country. 34 V., c. 4, s. 10.

Defaced coin not a legal tender.

9. No tender of payment in money in any gold, silver or copper coin which has been defaced by stamping thereon any name or word, whether such coin is or is not thereby diminished or lightened, shall be a legal tender. 32-33 V., c. 18, s. 17, *part*.

Payments in Nova Scotia on and after 1st July, 1871, to be in Canada currency.

10. All sums of money payable on and after the first day of July, one thousand eight hundred and seventy-one, to Her Majesty, or to any person, under any Act or law in force in Nova Scotia, passed before the said day, or under any bill, note, contract, agreement, or other document or instrument, made before the said day in and with reference to that province, or made after the said day out of Nova Scotia and with reference thereto, and which were intended to be, and but for such alteration would have been payable in the currency of Nova Scotia, as fixed by law previous to the fourteenth day of April, one thousand eight hundred and seventy-one, shall hereafter be represented and payable respectively, by equivalent sums in the currency of Canada, that is to say, for every seventy-five cents of Nova Scotia currency, by seventy-three cents of Canada currency,

How to be calculated.

and so in proportion for any greater or less sum: and if in any such sum there is a fraction of a cent in the equivalent in Canada currency the nearest whole cent shall be taken. 34 V., c. 4, s. 4.

As to debts in B.C. & P.E.I. contracted before 1st July, 1881.

11. Any debt or obligation contracted before the first day of July, in the year one thousand eight hundred and eighty-one, in the currency then lawfully used in the province of British Columbia, or in the province of Prince Edward Island, shall, if payable thereafter, be payable by an equivalent sum in the currency hereby established. 44 V., c. 4, s. 1.

Sums mentioned in certain Acts to be currency of Canada.

12. All sums mentioned in dollars and cents in "*The British North America Act*, 1867," and in all Acts of the Parliament of Canada, shall, unless it is otherwise expressed, be understood to be sums in the currency by this Act established. 31 V., c. 45, s. 2.

AN ACT RESPECTING DOMINION NOTES

(Chapter 31, R.S.C.)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Interpretation.

1. The expression "specie" in this Act means coin current by law in Canada, at the rates and subject to the provisions of the law in that behalf, or bullion of equal value according to its weight and fineness. 31 V., c. 46, s. 13, *part.*

Issue of Dominion notes.

2. The Governor-in-Council may authorize the issue of Dominion notes to an amount not exceeding that herein specified, and such Dominion notes may be of such denominational values and in such form, and signed by such persons and in such manner, by lithograph, printing or otherwise as he, from time to time, directs; and such notes shall be redeemable in specie or presentation at branch offices established or at banks with which arrangements are made as hereinafter provided at Montreal, Toronto, Halifax, St. John, N.B., Winnipeg, Charlottetown and Victoria, and at that one of the said places at which they are respectively made payable. 31 V., c. 46, s. 8, *part*;—43 V., c. 13, s. 4, *part.*

Amount of Dominion notes.

3. The amount of Dominion notes issued and outstanding at any time may, by Order in Council, founded on a report of the Treasury Board, be increased to [but shall not exceed] twenty million dollars, by amounts not exceeding one million dollars at one time, and not

Proviso: amount in gold and guaranteed securities to be held for redemption.

exceeding four million dollars in any one year: Provided that the Minister of Finance and Receiver-General shall always hold, for securing the redemption of such notes, issued and outstanding, an amount in gold, or in gold and Canada securities guaranteed by the Government of the United Kingdom, equal to not less than twenty-five per cent. of the amount of such notes—at least fifteen per cent. of the total amount of such notes being so held in gold; and provided also, that the said minister shall always hold for the redemption of such notes an amount equal to the remaining seventy-five per cent. of the total amount thereof, in Dominion debentures issued by authority of Parliament. 43 V., c. 13, s. 1, *part.*

And in unguaranteed debentures.

Amendment:—The limitation of twenty million dollars was removed by an Act passed in 1895 (59 V., Ch. 16), and the following provision made for the issue in excess of twenty millions:

Notwithstanding anything to the contrary contained in the said Chapter 31 of the Revised Statutes, Dominion Notes may be issued to any amount in excess of the sum of twenty million dollars, authorized by section 3 of the said Chapter, provided the Minister of Finance and Receiver-General, in addition to any amount required to be held by him in gold under the provisions of the said section 3, holds an amount in gold equal to the amount of Dominion Notes issued and outstanding in excess of the said sum of twenty million dollars.

Issue of Dominion Notes may exceed $20,000,000 provided equal amount in gold is held.

Notes to be a legal tender.

4. Such notes shall be a legal tender in every part of Canada except at the offices at which they are respectively made payable: the proceeds thereof shall form part of the Consolidated Revenue Fund of Canada, and the expenses lawfully incurred under this Act shall be paid out of the said fund. 43 V., c. 13, s. 5, *part.*

Debentures may be delivered to Minister of Finance, and disposed of by him for the purposes of this Act.

5. Debentures of Canada may be issued and delivered to the Minister of Finance and Receiver-General for the general purposes of this Act, and to enable him to comply with its requirements—such debentures being held as aforesaid for securing the redemption of Dominion notes, and the said minister having full power to dispose of them and of the guaranteed debentures aforesaid, either temporarily or absolutely, in order to raise funds for such redemption, and for the purpose of procuring the amounts of gold required to be held by him

Proviso.

under this Act; but nothing herein contained shall be construed to authorize the issue of debentures not otherwise authorized by Parliament, or any increase of the debt of Canada beyond the amount so authorized. 43 V., c. 13, s. 2.

Amount to be issued against gold only.

6. If any amount of Dominion notes is issued and outstanding at any time in excess of the amount then authorized as aforesaid, the Minister of Finance and Receiver-General shall hold gold to the full amount of such excess, for the redemption of such notes: and any amount of such notes which the public convenience requires may be issued and remain outstanding, provided the excess of such amount over that so authorized is represented by an equal amount of gold held by the Minister of Finance and Receiver-General as aforesaid; and the issue of Dominion notes so represented in full by gold, shall not be deemed an increase of the public debt; but except in the case of notes so issued against an equal amount of gold, the total amount of Dominion notes outstanding shall never exceed the amount authorized under section three of this Act. 33 V., c. 10, s. 6.

See, however, amendment to Section 3.

Minister of Finance to publish monthly statements.

7. The Minister of Finance and Receiver-General shall publish monthly in the *Canada Gazette* a statement of the amount of Dominion notes outstanding on the last day of the preceding month, and of the gold, guaranteed debentures and unguaranteed debentures then held by him for securing the redemption thereof, distinguishing the amounts of each so held at each of the cities at which Dominion notes are redeemable; and such statements shall be made up from returns made to the said minister by the branch offices, bank or banks at which such notes are redeemable. 43 V., c. 13, s. 3.

Offices or agencies for redemption of notes.

8. The Governor-in-Council may, in his discretion, establish branch offices of the Department of Finance at Montreal, Toronto, Halifax, St. John, N.B., Winnipeg, Charlottetown and Victoria, respectively, or any of them, for the redemption of Dominion notes, or may make arrangements with any chartered bank or banks for the redemption thereof, and may allow a fixed sum per annum for such service at all or any of the said places; and gold or debentures held at any such branch office or by any such bank for the redemption of Dominion notes, shall be deemed to be held by the Minister of Finance and Receiver-General: Provided that any Assistant Receiver-General appointed at any of the said cities under the "*Act respecting Gov-*

ernment Savings Banks," shall be an agent for the issue and redemption of such notes. 33 V., c. 10, s. 7;—39 V., c. 4;—43 V., c. 13, s. 4, *part*.

Redemption of Provincial notes.

9. Provincial notes issued under the Act of the late Province of Canada, passed in the session held in the twenty-ninth and thirtieth years of Her Majesty's reign, chapter ten, shall be held to be notes of the Dominion of Canada, and shall be redeemable in specie on presentation at Montreal, Toronto, Halifax or St. John, N.B, and at that one of the said places at which they are respectively made payable, and shall be (as provided by the lastly mentioned Act) a legal tender except at the offices at which they are respectively made payable. 31 V., c. 46, s. 8, *part*.

BANK RESERVES—THE BANK NOTE ISSUE

(53 Vict., Chapter 31 *in part*)

Part of reserve to be in Dominion notes

Penalty for non-compliance.

50. The bank shall hold not less than forty per cent. of its cash reserves in Dominion notes; and every bank holding at any time a less amount of its cash reserves in Dominion notes than is prescribed by this section shall incur a penalty of five hundred dollars for each and every violation of the provisions of this section:

Supply of Dominion notes.

2. The Minister of Finance and Receiver-General shall make such arrangements as are necessary for insuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of specie, at the several offices at which Dominion notes are redeemable, in the cities of Toronto, Montreal, Halifax, St. John, N.B., Winnipeg, Charlottetown and Victoria, respectively; and such notes shall be redeemable at the office for redemption of Dominion notes in the place where such specie is given in exchange.

Amount and denomination of bank notes.

51. The bank may issue and re-issue notes payable to bearer on demand and intended for circulation; but no such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars, and the total amount of such notes, in circulation at any time, shall not exceed the amount of the unimpaired paid-up capital of the bank:

Note issue of Banque du Peuple and Bank of British North America.

2. Notwithstanding anything contained in the next preceding sub-section, the total amount of such notes in circulation at any time of La Banque du Peuple and the Bank of British North America respectively shall not exceed seventy-five per cent.

of the unimpaired paid-up capital of such banks respectively, but each of such banks may issue such notes in excess of the said seventy-five per cent. upon depositing, with respect to such excess, with the Minister of Finance and Receiver-General, in cash or bonds of the Dominion of Canada, an amount equal to the excess; provided always that in no case shall the total amount of the notes of either of the said banks in circulation at any time exceed the unimpaired paid-up capital of such bank; and the cash or bonds so deposited shall be available by the Minister of Finance and Receiver-General for the redemption of notes issued in excess as aforesaid, in the event of the suspension of the said banks respectively:

Penalties for excess of circulation.

3. If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this section, the bank shall incur penalties as follows: If the amount of such excess is not over one thousand dollars, a penalty equal to the amount of such excess; if the amount of such excess is over one thousand dollars and is not over twenty thousand dollars, a penalty of one thousand dollars; if the amount of such excess is over twenty thousand dollars and is not over one hundred thousand dollars, a penalty of ten thousand dollars; if the amount of such excess is over one hundred thousand dollars and is not over two hundred thousand dollars, a penalty of fifty thousand dollars; and if the amount of such excess is over two hundred thousand dollars, a penalty of one hundred thousand dollars:

Notes under $5 to be called in.

4. All notes heretofore issued or re-issued by the bank, and now in circulation, which are for a sum less than five dollars, or for a sum which is not a multiple of five dollars, shall be called in and cancelled as soon as practicable.

Pledging of notes prohibited.

52. The bank shall not pledge, assign or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets:

Penalty for pledging.

2. Every person, who, being the president, vice-president, director, principal partner *en commandite*, general manager, cashier, or other officer of the bank, pledges, assigns, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank, and every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation, shall be liable to a fine of not less than four hundred dollars, and not more than two thousand dollars, or to imprisonment for not more than two years, or to both:

Penalty for improper issue or taking of notes.

3. Every person who, being the president, vice-president, director, principal partner *en commandite*, general manager, manager, cashier, or other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of the bank intended for circulation and not then in circulation,—and every person who, with knowledge of such intent, accepts, receives or takes, or authorizes or is concerned in the acceptance, receipt or taking of such notes,—shall be guilty of a misdemeanor, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both.

Notes to be first charge on assets.

53. The payment of the notes issued or re-issued by the bank and intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinafter provided, shall be the first charge upon the assets of the bank in case of its insolvency; and the payment of any amount due to the Government of Canada, in trust or otherwise, shall be the second charge upon such assets; and the payment of any amount due to the government of any of the Provinces, in trust or otherwise, shall be the third charge upon such assets:

Liability for penalties in case of insolvency.

2. The amount of any penalties for which the bank is liable shall not form a charge upon the assets of such bank, in case of its insolvency, until all other liabilities are paid.

Existing banks to make deposit with Minister of Finance equal to five per cent. of note circulation.

54. Every bank to which this Act applies, and which is carrying on its business at the time when this Act comes into force, shall, within fifteen days thereafter, pay to the Minister of Finance and Receiver-General, a sum of money equal to two and one-half per cent. of the average amount of its notes in circulation during the twelve months next preceding the date of the coming into force of this Act, or if such bank has not been in operation for twelve months, a sum of money equal to two and one-half per cent. of the average amount of its notes in circulation during the time it has been in operation; and each bank shall, within fifteen days from and after the first day of July, in the year one thousand eight hundred and ninety-two, pay to the Minister of Finance and Receiver-General such further sum of money as is necessary to make the total amount so paid by each bank to be a sum equal to five per cent. of the average amount of its notes in circulation during the twelve months next preceding the date last mentioned—which sum shall be adjusted annually as hereinafter provided:

Formation of circulation redemption fund.

4. The amounts so paid, retained, and kept on deposit as aforesaid shall form a fund to be known as "The Bank Circulation Redemption Fund"—which fund shall be held for the following purpose, and for no other, namely: In the event of the suspension by the bank of payment in specie or Dominion notes of any of its liabilities as they accrue, for the payment of the notes then issued or re-issued by such bank, and intended for circulation, and then in circulation, and interest thereon; and the Minister of Finance and Receiver-General shall, with respect to all notes paid out of the said fund, have the same rights as any other holder of the notes of the bank:

Fund to bear interest.

5. The fund shall bear interest at the rate of three per cent. per annum, and it shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per cent. of the average note circulaton of such bank during the then next preceding twelve months:

Note circulation, how determined.

6. The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister of Finance and Receiver-General; and where, in any return, the greatest amount of notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates:

Notes of banks suspending payment to bear interest until redeemed.

7. In the event of the suspension by the bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of such bank, issued or re-issued and intended for circulation, and then in circulation, shall bear interest at the rate of six per cent. per annum from the day of such suspension to such day as is named by the directors, or by the liquidator, receiver, assignee or other proper official, for the payment thereof,—of which day notice shall be given by advertisement for at least three days in a newspaper published in the place in which the head office of the bank is situate; but in case any notes presented for payment on or after any day named for payment thereof are not paid, all notes then unpaid and in circulation shall continue to bear interest to such further day as is named for payment thereof,—of which day notice shall be given in

If not redeemed to be paid out of fund.

manner above provided: Provided always, that in case of failure on the part of the directors of the bank, or of the liquidator, receiver, assignee or other proper official, to make arrangements within two months from the day of suspension of payment by the bank as aforesaid, for the payment of all of its notes and interest thereon, the Minister of Finance and Receiver-General may thereupon make arrangements for the payment of the notes remaining unpaid, and all interest thereon, out of the said fund, and shall give such notice of such payment as he thinks expedient, and on the day named by him for such payment, all interest on such notes shall cease, anything herein contained to the contrary notwithstanding;

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but nothing herein contained shall be construed to impose any liability on the Government of Canada or on the Minister of Finance and Receiver-General beyond the amount available from time to time out of the said fund:

Payments from fund to be without regard to amount contributed.

8. All payments made from the said fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made; and in case the payments from the fund exceed the amount contributed by such bank to the fund, and all interest due or accruing due to such bank thereon, the other banks shall, on demand, make good to the fund the amount of such excess, *pro rata* to the amount which each bank has at that time contributed to the fund; and all amounts recovered and received by the Minister of Finance and Receiver-General from the bank on whose account such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed among the banks contributing to make good such excess *pro rata* to the amount

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contributed by each: Provided always, that each of such other banks shall only be called upon to make good to the said fund its share of such excess, in payments not exceeding in any one year one per cent. of the average amount of its notes in circulation,—such circulation to be ascertained in such manner as the Minister of Finance and Receiver-General decides; and his decision shall be final:

Repayment of amount if bank is wound up.

9. In the event of the winding up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper official, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to such directors,

liquidator, receiver, assignee or other proper official, the amount at the credit of the bank, or such portion thereof as it thinks expedient:

Treasury Board may regulate management of fund.

10. The Treasury Board may make all such rules and regulations as it thinks expedient with reference to the payment of any moneys out of the said fund, and the manner, place and time of such payments, the collection of all amounts due to the said fund, all accounts to be kept in connection therewith, and generally the management of the said fund and all matters relating thereto:

Enforcement of payment.

11. The Minister of Finance and Receiver-General may, in his official name, by action in the Exchequer Court of Canada enforce payment (with costs of action) of any sum due and payable by any bank under the provisions of this section.

Notes of bank to be payable at par throughout Canada.

55. The bank shall make such arrangements as are necessary to insure the circulation at par in any and every part of Canada of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at the cities of Halifax, St. John, Charlottetown, Montreal, Toronto, Winnipeg and Victoria, and at such other places as are, from time to time, designated by the Treasury Board.

Redemption of notes.

56. The bank shall always receive in payment its own notes at par at any of its offices, and whether they are made payable there or not:

Payable at chief place of business.

2. The chief place of business of the bank shall always be one of the places at which its notes are made payable.

Payments in Dominion notes.

57. The bank, when making any payment, shall, on request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two or four dollars each, at the option of such person: Provided always, that no payment, whether in Dominion notes or bank notes, shall be made in bills that are torn or partially defaced by excessive handling.

Torn or defaced notes.

Notes may be signed by machinery.

59. All bank notes and bills of the bank whereon the name of any person intrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to

all intents and purposes as if such notes and bills had been subscribed in the proper handwriting of the person intrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatsoever: Provided always, that at least one signature to each note or bill must be in the actual handwriting of a person authorized to sign such note or bill.

One signature must be written.

Penalty for unauthorized issue of notes for circulation

60. Every person, except a bank to which this Act applies, who issues or reissues, makes, draws, or indorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars, which shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same; and a moiety of such penalty shall belong to the person suing for the same and the other moiety to Her Majesty for the public uses of Canada:

What shall be deemed such notes.

2. The intention to pass any such instrument as money shall be presumed, if it is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money; unless such instrument is a cheque on some chartered bank paid by the maker directly to his immediate creditor, or a promissory note, bill of exchange, bond or other undertaking for the payment of money, paid or delivered by the maker thereof to his immediate creditor, and is not designed to circulate as money, or as a substitute for money.

Defacement of note.

61. Every person who in any way defaces any Dominion or Provincial note, or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto, anything in the nature or form of an advertisement, shall be liable to a penalty not exceeding twenty dollars.

Penalty.

Counterfeit and fraudulent notes to be stamped as such.

62. Every officer charged with the receipt or disbursement of public moneys, and every officer of any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters the word "counterfeit," "altered" or "worthless," upon every counterfeit or fraudulent note issued in the form of a

Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business; and if such officer or person wrongfully stamps any genuine note he shall, upon presentation, redeem it at the face value thereof.

No advertisement, &c., to be issued in the form of a note.

63. Every person who designs, engraves, prints, or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, handbill or advertisement in the likeness or similitude of any Dominion or bank note, or any obligation or security of any Government, or of any bank, is liable to a penalty of one hundred dollars or to three months' imprisonment, or to both.

NOTES

Annual meeting of the Canadian Bankers' Association—The Annual Meeting of the Association this year will be held at Montreal, on the 25th October and following days. The Council will be pleased to see a large attendance of Associates, who are again invited to bring before the meeting—by means of a paper, a letter to the Secretary, or otherwise—any matters upon which discussion might prove interesting or profitable.

Canadian edition of the *Bankers' Magazine*—The attention of our readers is directed to the announcement by the publishers of the American *Bankers' Magazine*, to be found at the end of this number of the Journal, of a special issue of that periodical in which the subject of banking in Canada will be dealt with at length. In view of the attention which the subject of banking legislation is now receiving at the hands of the legislators and financiers of the United States, and of the interest which has been evinced by the public there in the working of the Canadian system, the issue of this special edition is timely. The *Bankers' Magazine* occupies very much the same position among bankers in the United States as its namesake does in Great Britain.

QUESTIONS ON POINTS OF PRACTICAL INTEREST

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value, the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Cheque, unmarked, received on deposit by the bank on which it is drawn—Right to recover on finding that there are not funds

QUESTION 255.—A bank receives on deposit from another bank a cheque drawn upon it by a customer, and enters the deposit at the credit of the other bank in the latter's pass-book. After entering the credit, but before 3 o'clock of the same day, the paying bank discovers that the cheque is not good, and wishes to charge it back to the depositing bank. Has it the right to rescind the credit which has been given? The transaction takes place at a small office where the teller, who took the deposit, should have known or been able to ascertain at once the state of the customer's account?

Would the position be different in a large office where the teller, who receives the deposit and passes the cheque, might not know for some time whether or not there were funds for it?

ANSWER.—The case of a cheque drawn on the same bank in which it is deposited differs from the case of a cheque drawn on another bank. In the one case the holder of the cheque when presenting it is entitled to know at once whether it is good or not, and his recourse against the drawer and endorser depends upon the cheque being dishonoured on presentation and upon

notice of the dishonour being properly given. If the presentation for deposit can be considered a presentation for payment (and we think it should be so considered), the question arises, has the cheque been honoured by credit for it being given in the depositor's book. If so then the holder has lost his remedy against the drawer and endorser, as he cannot properly notify them that the cheque has been dishonoured and the bank cannot, after changing his position in this way, repudiate the credit. *Prima facie* this would, we think, be the position, and the principles explained in the *River Plate Bank v. Bank of Liverpool* case would apply. We think, however, that if it were clearly shown that by universal custom, or by agreement with the customer, the presentation for deposit entitled the bank, as the drawee of the cheque, to take a reasonable time to consider whether to pay the cheque or not, and in the meantime to credit the amount in the depositor's book, then the bank would not be prevented from subsequently, and within the reasonable time, refusing payment, as the entry in the book would not, in such a case, be treated as honouring the cheque in a way to prevent the holder from giving notice of dishonour if payment were afterwards refused.

Place of payment of an acceptance

QUESTION 256.—A bill dated at Woodstock and drawn on a party in St. John reads:

" Pay to the Merchants Bank here the sum of —."

Is this bill payable in Woodstock or St. John ?

ANSWER.—It might be argued that "here" qualifies the order to pay, that is, that the bill is an order to pay the money in Woodstock. We think that the word "here" must be regarded as part of the description of the bank, that is that the bill should be read as if made payable to "the Merchants Bank, Woodstock." The *place* of payment not being designated on the bill it should be presented for payment to the acceptor.

Marked cheque raised subsequent to the marking

QUESTION 257.—Could the bank on which a marked cheque is drawn, which has been "raised" after marking, be held responsible for more than the original amount under any circumstances?

ANSWER.—Before the decision in *Schofield v. Earl of Londesborough*, the only case we can conceive where a colour of claim to hold the accepting bank responsible might have arisen would be one where it had accepted a cheque so drawn that the

increased amount might be written in without any alteration being apparent. But that case, which was reported fully at page 102, Vol. IV of the JOURNAL, is conclusive against this and relieves the acceptor from responsibility for a fraud committed in this way.

Hour at which a note may be protested

QUESTION 258.—Is it legal to protest a note at one o'clock on Saturday? Are we not bound to wait till three as on other days?

ANSWER.—The answer which we gave on this point at page 301, Vol. III, applies equally to Saturday. A protest cannot be made on any day till three o'clock. This does not in any way conflict with the bank's right to close its doors at one o'clock. As explained in the answer above referred to, the notary might present a cheque at ten in the morning, and, if then dishonoured, he would do his full duty if he simply held it till three o'clock and thereafter completed the protest without further presentation.

Cheque sent for collection and lost in the mails

QUESTION 259.—On July 18th we sent a cheque on a branch of La Banque Ville Marie to that bank for collection. On July 26th (which would be the usual time to ask its fate), hearing of the suspension of the bank, we wired them to remit cash or return it at once, to which they replied that it had not been received. On the same day we notified the endorsers (from whom we have a general waiver of protest) that it had not been paid, and suggested that they notify the drawer.

The drawer writes that the cheque has not been charged to him, but that, as he sent it to the endorsers on July 14th, they had ample time to cash it before the suspension, and he disclaims any responsibility. As they are out-of-town customers, we claim that the cheque was forwarded in the ordinary course of business, and the drawer was notified of its non-payment as speedily as circumstances permitted. On whom do you think the loss (if any) should fall?

As the cheque has not turned up in the mails, as yet, what action should be taken?

ANSWER.—We think the drawer is responsible notwithstanding the delay in presentation, assuming that there was no unreasonable delay on the part of the payee or the bank in sending the cheque forward.

If a cheque is not presented within a reasonable time, then under sec. 73a, the drawer is discharged to the extent of any damage he suffers by such delay, but delay in making presentment for payment is, under sec. 46, excused when the delay is caused by circumstances beyond his control. Delay in the post-office would, we think, come within this rule.

Note payable with interest—Failure of bank to collect interest

Question 260.—A teller in a bank takes from a customer some notes for collection and at his request initials the pass-book by way of receipt for the same. The notes are handed over to the collection clerk, who puts them through and in turn he gives them to the accountant to check. One note bears interest at six per cent. The collection clerk does not add the interest to the face of the note, and enters it in the diary for the face amount, the entry being checked by the accountant. On the day of maturity the teller initials for the note in the diary and accepts the face amount, placing the money to the payee's credit. Eight months after the payment of the note the payee claims that the interest should have been credited to him and demands the amount. The note is in the promissor's possession, who cannot be found.

At such a late day can the customer demand interest, and has he not to prove that the note bore interest, our books not showing that it did?

Who would be responsible for the amount as among the clerks, the teller or the accountant, or should each bear a share?

Answer.—We think that the bank is undoubtedly responsible to the owner of the note for the amount short collected, if, as a matter of fact, the note was payable with interest. The owner must of course prove this fact before the bank could be called on to pay.

As among the clerks it is somewhat difficult to fix the responsibility for the oversight. We should think, however, that it must chiefly rest on the teller. He was handed the voucher, and when he took payment had the document itself on the counter and should have collected the amount according to its terms. We do not think the collection clerk who entered the bill, or the accountant who passed the entry, can be held responsible, although as a matter of fair dealing it must be said that they helped to lead the teller into the mistake.

Cheque to the order of "Sam. Jones"—May the bank pay to anyone of that name?

QUESTION 261.—If a cheque is drawn in favour of Sam. Jones without any further description of payee, can the bank pay the money to any Sam. Jones, or is it the bank's duty to find out to which Sam. Jones the cheque belongs?

ANSWER.—The bank would we think be responsible if it paid the money to anyone other than the Sam. Jones to whom the cheque belongs.

Eligibility for associate membership in the Canadian Bankers' Association

QUESTION 262.—Does an associate of the Canadian Bankers' Association forfeit his right to be an associate by resigning his position in a chartered bank to enter a private banker's employment.

ANSWER.—No one who is not on the staff of a chartered bank is eligible for associate membership. Anyone may of course be a subscriber to the JOURNAL.

Right of drawee bank to demand the endorsement of the payee of a cheque to "order"

QUESTION 263.—(1) A cheque is drawn "Pay to A. B. or order." The payee presents the cheque for payment to the bank on which it is drawn. Can the bank refuse payment unless payee endorses the cheque? (2) Is a party receiving money in payment of a debt due him obliged to give a receipt for the money?

ANSWER.—Both these enquiries are covered in the reply to question 134, p. 446, Vol. V.

Joint and several note presented at the bank where it is payable, and where one of the promissors has an account in funds

QUESTION 264.—A joint and several promissory note made by three parties is presented at maturity at the bank where it is payable and where one of the parties has an account with sufficient funds at credit to cover the note. Should the bank pay the note and charge it to his current account?

ANSWER.—We think the bank ought not to pay the note on its customer's account without his instructions.

Letters of Credit—Drafts thereunder paid at the current rate of exchange for 60-day bills

QUESTION 265.—Referring to the practice of cashing drafts drawn under Letters of Credit, "at the current rate for 60 day

bills," where Bank A cashes a draft under a Credit issued on Bank B, must Bank A accept whatever rate Bank B may claim to be the *current* rate at the point on which the Credit is drawn.

ANSWER.—The proper way to regard the matter is no doubt this, that drafts under Letters of Credit payable at "the current rate of exchange," are to be cashed at the best rate at which the bank would buy a 60-day bank bill on England. This matter was discussed in the JOURNAL; see questions 93 and 99 in Vol. V. The holder is clearly not bound to take an inadequate rate from the drawee, but unless the latter will make itself liable by some undertaking in the nature of an acceptance, the holder would have to look to the drawer or issuer of the Credit for reimbursement.

Authority of an executor to give a renewal of a note made by the testator

QUESTION 266.—The executor of an estate endorses, "Estate of C. B. by A. D. executor," on renewals of a note current during the lifetime of the testator. Has he as executor a right to bind the estate in this way?

ANSWER.—If this were to be regarded as a new contract of endorsement, the executor's authority would depend on the terms of the will, and it would probably be found that he had no authority to bind the estate in this way. Regarded, however, as an extension of the obligation created by the testator, we think that it would be held good, and the original liability of the estate would be continued.

Writ of garnishment served on the maker of a note by a creditor of the original payee—Can the maker safely pay the holder?

QUESTION 267.—A is promissor on a note in favour of B, which is overdue and is held by a bank, having been duly endorsed by B. A creditor of B's serves a writ of garnishment on A for the amount due on the note. Can A safely pay the bank which holds the note, he being ignorant whether the bank holds it for value or merely for collection on account of B.

ANSWER.—The promissor is bound to pay the holder of the note. If B has any interest in the moneys after they are collected, his creditors might take proceedings to attach it in the hands of the bank. A, however, is protected if he pays the note to the holder.

Fire insurance policies as collateral security

QUESTION 268.—Can insurance on the store and goods of a trader, assigned as collateral security for money advanced for the purpose of carrying on his business and meeting his liabilities, be legally recovered?

QUESTIONS ON POINTS OF PRACTICAL INTEREST

FORM FOR QUESTIONS

The Editing Committee

Journal of the Canadian Bankers' Association, Toronto.

Please give your opinion on the following point by mail* / in the next issue of the Journal

Question : ....

....

....

....

....

.... If the question does not call for an answer by mail, the enquirer's name need not be given if he so prefers.

*If answer is desired by mail, stamp should be enclosed.

Answer.—The policy would be voided if it were assigned to a creditor who had no insurable interest in the property, even if the Company assented thereto, or if it were assigned to a creditor who had an insurable interest without the Company's consent. But the insured may assign any sum of money which may become payable under the policy to his creditor. This is not an assignment of the contract of insurance. Under ordinary circumstances the creditor could recover from the insurance company the amount of any loss so assigned.

Warehouse receipt forms

Question 269.—Is the following form of warehouse receipt good from a bank's point of view? It differs materially from the usual bank form:

"Received in store from A. B., 83 large cheese marked 'H' to be "delivered to the order of A.B. to be endorsed hereon.
"Blanktown, 18th August, 1899. C. D. & Co."

Answer.—We think this is a valid form of receipt. The points in which it differs from the form usually employed by banks, as for example in regard to a statement of the place where the goods are stored, or that they are to be held until delivery pursuant to order, are not essential.

Stop payment of a marked cheque

Question 270.—(1) The successful tenderer for a contract being let by the town of B—discovers after being awarded the contract, that he has made a mistake in his calculations. He asks to have his tender cancelled and the accompanying marked cheque returned, which the town refuse to do. Can he stop payment of the cheque?

(2) The town of B—bring to a local bank the above mentioned cheque which is drawn on a bank in another place, and ask to have it cashed without recourse against the town. Would the bank be safe in cashing it?

Answer.—(1) A customer cannot stop payment of a marked cheque which has reached the hands of the payee, without the payee's consent. This point is discussed in the replies to questions 46 and 89. If the customer chooses he can bring proceedings against the town for the return of the cheque, and can obtain, if the Court will grant it, an injunction preventing their dealing with it and preventing the bank from paying it, but short of restraint by the Court we do not see on what ground the bank could refuse to pay the cheque.

(2) A bank might be safe in negotiating a marked cheque without recourse to the payee if they knew of nothing affecting the payee's title to the cheque, or his right to negotiate the same. The proposal, however, would be so unusual that it might almost constitute notice that something was wrong, and we think it would be unwise to adopt such a course.

Notes and cheques of a customer charged at maturity to his savings bank account without special authority

QUESTION 271.—Would a bank be upheld in law in charging up acceptances and notes as they mature to a customer's account in the savings department without special authority. The following clause is printed on the customer's pass-book? "No draft or cheque drawn against the within deposit can be paid unless such draft or cheque be accompanied by this pass book."

ANSWER.—If the bank were the holder of a note made by a party who had funds in a savings bank account, it would certainly be justified in charging the note against that account by way of set-off, but if the bank were not the holder of the note, and it is merely presented at the bank because made payable there, we think that the ordinary relation of banker and customer with respect to a current deposit account (which gives to the bank implied authority to pay for the customer notes and acceptances which he has domiciled with it), would not apply to a savings bank account upon which the customer cannot, as a right, draw cheques in the ordinary way and which is not presumed to be used for payment of his notes and acceptances. Special authority from him would be required.

Collections—Responsibility of banks for the selection of collecting agents

QUESTION 272.—A bank receives on deposit from one of its customers a sight draft which is sent for collection to a branch of La Banque Ville Marie. The latter remit by draft on the head office, but before the draft can be presented the institution closed its doors. Can the first bank look to its customer for the amount?

ANSWER.—The cases make it clear that unless the bank sent the bill to the Banque Ville Marie at the request of the depositor, they are responsible for the consequences of sending it there. The point is fully discussed in the reply to Question No. 38 (Vol. III., p. 394.)

Cheque certified "good for two days only"

Editing Committee Journal of the Canadian Bankers' Association, Toronto:

Dear Sirs,—The reply given in the Journal for July, 1899, to question No. 228, is so entirely at variance with that which has I believe hitherto been the accepted view of the matter, that I may perhaps be pardoned for drawing your attention to it. Writing from memory I think I am correct in stating that this question arose some years ago in a very important way, when the tenders for the construction of the Canadian Pacific Railway were under consideration by the Government at Ottawa. The Minister of Railways, Sir Charles Tupper, I think, refused to accept the deposit made by one of the tenderers on the ground that the cheque had been marked good by the Bank of Montreal, Ottawa, with a time limit attached. As soon as the question arose it was at once referred, we were told at the time, to the authorities of that Bank at head office, and the reply made was that the cheque would be considered *good until paid*, in spite of any limit attached to the acceptance.

This answer was in accord with the view held by bankers generally when the dispute arose, and I remember it was the cause of a good deal of angry discussion in the press at the time.

If the cheque is charged to a customer's account at the same time that it is marked good with this qualification, how is the acceptance to be cancelled? Is the time limit really of any effect legally, because I have been instructed that it has none?

I submit these remarks with the utmost deference and only for the purpose of making the matter still more clear.

Yours truly,

E. D. Arnaud

Annapolis, N.S., 21st Aug., '99

[We think that the answer we have given is correct. The fact that the bank in the case cited had declared that the cheque would be considered good until paid does not affect the question. It merely meant that they were willing to go beyond the contract entered into on the cheque, and in that particular instance it was done because the drawer of the cheque particularly wished it to be held good, and the limitation in the acceptance was an error on the part of the officer who marked the cheque.

On the general question we think that when a cheque is marked with a time limit the Bank might regard itself as free from liability thereon, and reverse the debit to the customer's account after the expiry of the time, although in practice it is quite unlikely that either the customer or the Bank would wish

to do this. If, however, the customer were to say to the Bank under such circumstances: "You are no longer liable on the "cheque which you marked a week ago and charged to my "account. I wish you to reverse this entry and to pay other "cheques which I have drawn," we think it very doubtful indeed whether the Bank would not be liable for damages if it should refuse to honour cheques to the extent of the balance which the customer's account would show after reversing the entry for the marked cheque.

The "moral" of the whole matter seems to be that banks should not accept cheques except in the absolute form.—Ed. Comm.]

Legal

LEGAL NOTES

Cheque sent by mail—The decision of the Queen's Bench Division, England, in *Baker v. Lipton* does not differ from the previous judgments on the same point which have been discussed in the JOURNAL. The principle governing these cases is that a cheque sent by mail is at the sender's risk unless it is so sent at the creditor's request. The last preceding case bearing on this point was *Pennington v. Crossley*, which was reported at p. 414 of Vol. IV, and p. 121 of Vol. V.

Dividends paid out of capital—Some English journals in commenting on the judgment of the Court of Appeal *In re The National Bank of Wales*, in which it was sought to make a director responsible for the payment of dividends where proper allowance was not made for bad debts, suggest that the popular idea as to the responsibilities of directors needs now to be considerably modified. It would, no doubt, be extremely difficult in most cases, assuming that profits could not be calculated until bad debts were written off, to say what the profits really were, because the question as to the provision necessary for bad debts is a matter of rather nice judgment, in which men might honestly differ very much. No doubt this is the basis on which decisions on this point have been reached by the Courts. The judgment is a very able one, dealing with a most important matter, and we have, therefore, published it in full, notwithstanding its length.

Loan company debentures and the prior lien.—The judgment giving priority to the debenture holders of the Farmers Loan Company cannot, we think, be read by the ordinary depositors in companies issuing debentures of a similar character, without some feelings of disquiet. We think that undoubtedly no loan company in Ontario has any desire to discriminate between those having deposits and those holding its debentures, but this case shows that a company may by a declaration in its debenture forms create a charge in favor of one set of creditors, of which another set may be totally ignorant. We are not aware that any other company has created such a charge to the disadvantage of its depositors as existed in the case of the Farmers Loan Co., but we believe it has been the practice of some companies to print on the face of their debentures a statement to the general effect that the moneys represented thereby are invested in a particular way, and in cases where the wording of this statement is such that it might possibly be read as giving the debenture holders a prior lien on the companies' assets, the companies owe it to their depositors to have the matter set right without delay.

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Liability of persons who endorse a note before delivery to payee—From the number of questions that reach us, it is clear that much doubt is felt as to the position of parties whose names appear on bills offered for discount where they are not promissors or payees, nor endorsers in the ordinary sense of the word. The most frequent cases are those where notes are made payable to a bank and presented for discount bearing the endorsement of a third party placed thereon for the purpose of aiding their negotiation. The case of *Jenkins v. Coomber*, which we report in this number, deals with a set of circumstances somewhat different from those usually existing here, and the same conclusion would not necessarily be reached, but the judgment undoubtedly gives a very different view of the law from that hitherto held here, under the sanction of several decisions in our courts, and the opinions that have been

expressed on this point in the JOURNAL from time to time will need to be modified. We hope, however, to discuss the question fully in a later issue of the JOURNAL.

Guarantee—Appropriation of payments.—The claim of the Government against the Hon. A. W. Ogilvie, in respect to the latter's guarantee of a deposit in the Exchange Bank of Canada, has been heard in appeal by the Supreme Court of Canada and judgment given against Mr. Ogilvie, reversing the previous judgment in the Exchequer Court. The case is perhaps more interesting from the historical point of view than because of the legal principles involved, but the latter are sufficiently interesting. The judgment of the Exchequer Court was fully reported and commented on in Vol. V of the JOURNAL, pages 250 and 257. There is of course no difference of opinion as to the principles of law which should govern the imputation of payments, but the Supreme Court refuses to hold with the Exchequer Court that the action of the bank in treating the payments as made on account of the debts for which Mr. Ogilvie was not liable, was an error which he was entitled to have amended. The Court held that the appropriation by the bank could not be repudiated by it; that even if there had been an error and therefore no appropriation at all on the part of the bank, the Government had then the right to appropriate and had done so by returning the older deposit receipts; and further that even if this were not held to be true the bank could not amend or annul the imputation made by them unless they could restore the Government to the position in which it would have been if no imputation at all had been made, which is impossible.

LEGAL DECISIONS AFFECTING BANKERS

House of Lords

Sharp (Official Receiver) v. Jackson and others*

The question of whether there has been a fraudulent preference depends not upon the mere fact that there has been a preference, but also on the state of mind—the intention—of the person who made it.

This was an appeal from a decision, dated May 13th, 1897, of the Court of Appeal (Lord Esher and Lords Justices A. L. Smith and Chitty), reported under the name of *New's Trustees v. Hunting*, which affirmed a previous decision of Mr. Justice Vaughan Williams. The question was one of alleged fraudulent preference by an insolvent person, on the eve of bankruptcy, of certain of his creditors to the detriment of others. The facts were somewhat complicated, but it will be sufficient to state briefly their general effect. The action was for a declaration that a deed of conveyance executed by Prance (a member of the firm of Messrs. New, Prance, and Garrard, solicitors, of Evesham) on March 29th, 1894, was void as against the plaintiff, as the trustee of his estate in bankruptcy, and that certain deposits of certificates of shares in a company made by Prance by way of security were void and conveyed no title as against the plaintiff. In November, 1893, New, the senior partner in the firm, died insolvent, and the business was carried on by Prance and Garrard until March 31st, 1894, two days after the execution of the deed above mentioned, when a receiving order was made against them on their own petition. They were subsequently adjudicated bankrupts, and the plaintiff was trustee both of the estate of New and of that of the firm. The said firm were practically scriveners and bankers as well as solicitors, and were largely employed by clients who borrowed money from them at interest, and also by clients who deposited money with them for investment and also at interest. Courtney Connell Prance, one of the partners in the firm, was a trustee of a number of properties, and in some of these cases he was the sole trustee. The present litigation is thus one of

Times Law Reports.

the many striking instances of the extreme danger of allowing trust estates to be in the hands of a sole trustee. The deed which was attacked by the appellant was made between the said C. C. Prance and William Hunting, a clerk in the office of the firm. It stated that Prance was the owner of the Longdon-hill estate, of about 89 acres, in Worcestershire, which yielded about £414 a year, and was subject to mortgages amounting to £6,400. It also recited that Prance was the active trustee of the estates specified in the schedule to the conveyance, and the recital continued thus :—" On the happening from time to time of the payment off of the securities on which the trust funds thereof have been invested, he (Courtney Connell Prance) has allowed the same to be paid into the general banking account of the said firm of New, Prance, and Garrard pending their reinvestment on other securities, with the result that as to the sums mentioned in the second column of the first part of the said schedule hereto there are at the present time no securities appropriated for the same, and, as to the trusts mentioned in the second column of the second part of the said schedule, the trust funds have been invested on securities, yet, by reason of the agricultural depression and the depreciation of land since the investment was made, it is estimated that such securities are deficient in value to the amount mentioned in the second column of the second part of the said schedule." By the said draft the said Courtney Connell Prance purported in effect to convey the Longdon-hill estate to the said William Hunting in fee simple as trustee, subject to the mortgages existing thereon, upon trust to raise by way of sale or mortgage the sums mentioned in the draft, and to pay the same to the trustees for the time being of the scheduled trust estates to be held by them upon and for the trusts declared by the instruments of which they were respectively the trustees; and the draft contained a declaration that, if the moneys ultimately required for rectification and completely satisfying the recited breaches of trust should be less than the sum of £4,200, then that the difference between the moneys received by the trustee (William Hunting), and that which should be actually required for the rectification of the trust estates should be held by the trustee (William Hunting) in trust for the said Courtney Prance. Prance also

instructed one of his clerks to put certain parcels of share certificates in the respective boxes containing the securities and papers connected with certain of the trusts, together with a memorandum in each case that the certificates were thereby deposited as further and additional securities for the amount owing to each of the several trust funds. The plaintiff—appellant in the House of Lords—claimed both the property included in the conveyance and these share certificates for the benefit of the general creditors. The deed was executed and the deposits made by Prance without any pressure on the part either of his co-trustees of any of the properties or of the persons beneficially interested. The Courts below upheld the conveyance and deposits of shares, as against the general creditors, on the ground that Prance's object was not to prefer certain of his creditors to others, but to shield himself from the consequences of his breaches of trust, and that there was thus no fraudulent preference within the meaning of the Bankruptcy Act, 1883, section 48.

The Lord Chancellor, in moving that the appeal should be dismissed, adopted the language of Lord Esher in the Court of Appeal:—"The doctrine with regard to fraudulent preference is well known. The question whether there has been a fraudulent preference depends, not upon the mere fact that there had been a preference, but also on the state of mind of the person who made it. It must be shown not only that he has preferred a creditor, but that he has fraudulently done so. It depends upon what was in his mind. Whether it is called 'intention' or 'view' or 'object' does not appear to me to matter much. The question is whether in fact he had the intention to prefer certain creditors. It has been argued that the debtor must be taken to have intended the natural consequences of his act. I do not think that is true for this purpose. I think one must find out what he really did intend. The recitals in the deed seem to me to show what was really his object. It appears to me obvious that he was not actuated by any feeling of bounty towards those in whose favour the deed was made, but was doing what he did for his own benefit. He wanted to render those particular persons disinclined to proceed to extremities against him. He knew that what he had done must be discovered very shortly, and those persons had a hold upon him, because if they chose to proceed against him the consequences to him might be very serious. He thought that

if he put them as far as he could into the same position as if he had not committed the breaches of trust, that might go in mitigation of the consequences to himself. It seems to me clear, therefore, that he made this conveyance not with the 'intention' or 'view' or 'object,' or whatever it may be called, of preferring these persons, but for the sole purpose of shielding himself. Under these circumstances, what he did is not a fraudulent preference within the Bankruptcy Act."

Lord Macnaghten, Lord Morris, and Lord Shand concurred, and the appeal was dismissed.

Court of Appeal, England

In re the National Bank of Wales (Limited)

Held, that payment of dividends out of the annual profits, when no allowance was made for numerous and increasing bad debts, did not amount to payment of dividends out of capital.

Judgment was delivered upon this appeal from a decision of Mr. Justice Wright. The liquidator in the winding up of this company under the supervision of the Court issued a summons against Mr. John Cory, a former director of the company, asking for a declaration that he as director was guilty of misfeasance or breach of trust (1) in authorizing, sanctioning, or participating in the payment to shareholders of the company of interest or dividends on their respective shares out of the capital of the company, and was liable and might be ordered to repay to the liquidator the amount so paid during the period in which he acted as director; (2) in making or sanctioning improper advances out of the funds of the company in contravention of the articles, whereby a loss accrued to the company, and that he might be ordered to pay to the liquidator the amount of that loss; (3) in making or sanctioning improper advances to customers, and allowing overdrawn accounts and debts of customers to continue, with knowledge that those customers were, or were reputed to be, insolvent or otherwise unable to pay the amount of their indebtedness, whereby a loss had accrued to the company, and that he might be ordered to pay to the liquidator the amount of that loss. An agreement was, on February 23rd, 1893, entered into between the bank and the Metropolitan Bank of England and

Wales for the purchase by the latter company of the assets and goodwill (other than the uncalled capital) of the National Bank, the Metropolitan Bank undertaking to satisfy the liabilities of the National Bank. In case the assets and goodwill should prove to be of less value than the liabilities, the National Bank or their liquidators were to call up sufficient of the uncalled capital to pay the deficiency. The agreement was made conditional upon the shareholders passing resolutions for the voluntary winding up of the bank. This was afterwards done, and the agreement was approved by the shareholders and was carried out. There was an amount of £7 10s. per share uncalled upon the shares of the National Bank. In the result it turned out that the value of the assets and goodwill was less by about £41,000 than the amount of the liabilities. The creditors of the National Bank had been paid, and this summons was taken out really in order to obtain payment by means of it of the above-mentioned deficiency of £41,000. Mr. Justice Wright held that the claims (2) and (3) made by the summons had not been established, but he held that claim (1) had, and he ordered Mr. Cory to pay to the liquidator a sum of £37,000, with interest at 5 per cent. The interest amounted to over £17,000. Mr. Cory appealed, and the liquidator gave a cross notice of appeal with regard to the claims (2) and (3) which had been dismissed. The cross notice asked that, "For the purpose of ascertaining the amount of the liability of the said John Cory in respect of the matters aforesaid, all necessary accounts and enquiries may be directed to be taken and made; and that in taking and making such accounts and inquiries the whole period during which the said John Cory acted as such director, as aforesaid, may be considered, notwithstanding that six years may have elapsed from the commencement thereof, on the ground that the losses arising from the wrongful acts aforesaid, and that the true state of affairs of the said company were fraudulently concealed by the said John Cory, and that the said John Cory issued balance-sheets that were false to the knowledge of the said John Cory, and, moreover, that parts of such interest and dividends were retained by the said John Cory, and converted to his own use as a shareholder of the company."

The Court allowed the appeal, and dismissed the cross appeal.

The MASTER of the ROLLS read the judgment of the Court, in which, after stating the order appealed from and the grounds alleged by the liquidator in his notice of cross appeal, his Lordship continued as follows :—

The appeal and cross appeal thus require the Court to examine into Mr. John Cory's conduct as a director of this company from the time when he became a director in 1884 until he ceased to be so in December, 1890, or even later, if the liquidator is correct. The order under review was made on a summons issued under section 10 of the Companies (Winding-up) Act, 1890, on June 14, 1895, a date which is material, having regard to the Statute of Limitations on which Mr. Cory relies as a defence to the greater part of the demands made against him. It will be convenient to consider his appeal first. This raises the question whether the funds of the company have been misapplied in payment of dividends, and, if they have, then whether Mr. John Cory is liable for that misapplication. Before examining the controverted facts, and discussing the legal questions which arise, it is desirable to state shortly the history of the company, and how the present controversy has arisen. The National Bank of Wales is a limited banking company formed in 1879. Its objects were to carry on the business of bankers, including the making of advances and the acquisition of other businesses. Its capital was £2,000,000, divided into 100,000 shares of £20 each. The shares issued were never paid up in full, £10 being paid up and the remaining £10 being uncalled, and forming, therefore, a large sum available in case of need. The number of shares increased from time to time. In 1884 the paid-up capital amounted to £125,000, and it so remained until 1890, when it was increased to £225,000. The articles of the association, which require notice, are the following :—(15) Gives the company a lien on all the shares held by any shareholder indebted to the company, and gives the directors a power to sell the shares of any such shareholder; (78) enables any director to resign, and on the acceptance of his resignation by a board his office is vacated; (82) makes audited accounts approved by a general meeting conclusive, except as regards errors discovered within three months; (82, 83) entitle the directors and officers to indemnity, except against their own wilful acts and defaults; (86) entrusts the management of the business of the company to the board of directors. Article (98*b*) empowers the board to appoint and dismiss branch managers and the general manager; (98 *e* and *h*) empower the board to lend money or give credit with or without security. But there is (in 98*c*) a proviso "that no advances without security shall be made or credit given" to any director;

(99 and 100) relate to the general manager; (105) requires the directors to cause proper accounts to be kept, so as to show the true state and condition of the company; (108) requires them to lay before every ordinary meeting a proper balance-sheet, accompanied by a report as to the state and condition of the company, and as to the amount, if any, which they recommend to be paid out of the profits by way of dividend; (109 to 118) provide for auditing the accounts. The auditors are to have access to the company's books and accounts. By (116 and 117) they are to have copies of the statements proposed to be laid before the general meetings, and it is declared to be their duty to examine the same with the accounts and vouchers relating to them, and to make a report thereon, and also to examine and report on the assets of the company. The auditors are also to report errors and irregularities to the board; (119) empowers the directors, with the sanction of a general meeting, to declare dividends in proportion to the amounts paid up on the shares, and also authorizes the payment by the directors of interim dividends out of the profits of the bank accrued in any half year ending June 30th; (120) empowers the directors to set aside out of the profits a reserve fund, and no dividend exceeding 6 per cent. per annum shall be paid until the reserve fund amounts to one-fifth of the paid-up capital; (121) says the reserve fund may be applied to meet contingencies, equalize dividends, repairs, or any other purpose of the company which the board may think fit. The company's principal bank and its head office were at Cardiff, where the directors met and the general manager was in daily attendance. The company had also many branch banks, each with its own manager. The course of business was this. Each branch manager sent weekly to the head office what is called a weekly state—*i.e.*, an account showing how the assets and liabilities of the branch stood, what advances or overdrafts have been made or allowed, and to whom, what securities the bank held, and other matters. Every quarter each branch manager made a more formal return to the head office, showing the position of the branch and the business done during the past quarter. It was the duty of the general manager to examine these documents, and to report to the board anything disclosed by them which required their attention. The weekly states and quarterly returns were in the board room for reference in case of need, but, unless attention was called to them, the directors did not think it necessary to examine them. The chairman of the directors was Mr. Thomas Cory, a brother of Mr. John Cory. The chairman and the general manager (Mr. Collins) visited each branch bank every year; and in addition two skilled inspectors frequently went around and inspected the accounts and reported to the general manager.

The accounts of the branch banks appear, however, not to have been separately audited by professional accountants. The auditors employed to examine the company's accounts, and to certify the annual balance-sheets and accounts laid before the shareholders, only saw the head office books and the returns from the branch offices, certified by their respective managers to the head office. These certified returns formed part of the weekly states, but omitted much that they contained. The minutes of the directors' meetings showed that, speaking generally, they attended with reasonable regularity and transacted a large amount of business. No director, unless it was the chairman, attended to any details not brought before the board, either by the chairman or by the general manager. Mr. John Cory has stated in his affidavit the general course of business at board meetings, and his cross-examination does not substantially differ from the account he there gives. Mr. Justice Wright has regarded this evidence as an admission by Mr. John Cory of a total abnegation of the use of his faculties, and of an entire neglect of his duties. We cannot go so far as this. His evidence does, however, show that he only attended, when present, to whatever his attention was called to; and that having no suspicion that anything was wrong he made no special enquiries in order to ascertain that all was right. After Mr. John Cory had ceased to be a director the company made large advances on insufficient security and took over an insolvent business which greatly embarrassed it. The company, however, was not unable to pay its debts, for its large uncalled capital was amply sufficient for that purpose, and, so far as its outside liabilities are concerned, it always has been and is quite able to discharge them in full. Being, however, in difficulties, the National Bank determined to amalgamate with another company and to wind up. An agreement was entered into between the National Bank and the Metropolitan Bank for the transfer to the Metropolitan Bank of all the assets of the National Bank (except the uncalled capital) and for the payment by the Metropolitan Bank of all the debts and liabilities of the National Bank, subject, however, to this stipulation,—namely, that if the assets transferred exceeded the liabilities the excess should be returned to the National Bank, whilst if the assets transferred should prove insufficient to discharge those liabilities the deficiency should be made good by the National Bank. There is a deficiency of about £41,000, which the National Bank has to make good. The sum can be raised easily enough by a call on the shareholders; but they naturally object to this if money can be got in from other quarters which will relieve them from the necessity of paying a call. The investigation into the affairs of the National Bank which has

been made in order to carry out this amalgamation with the Metropolitan Bank has revealed a very unsatisfactory state of things. The whole of the paid-up capital has been lost, and some £41,000 has to be raised to clear it from debt. The cause of loss is to a large extent attributable to the fact that a large number of debts due to the bank by its customers have turned out to be bad; and large sums advanced to directors and owing by them are irrecoverable. Moreover, large dividends have been paid for a number of years as if the bank was flourishing, whilst, in truth, if its affairs had been properly conducted, the large dividends declared and paid ought never to have been recommended by the directors. There can be no doubt that the shareholders were grievously deceived by the reports and balance-sheets laid before them; and no one can be surprised at their anger with the directors, and especially with the chairman and general manager, both of whom have been criminally prosecuted and convicted for their fraudulent conduct. Mr. John Cory's answer, however, to the attempt to make him liable for the losses sustained and dividends paid whilst he was a director is that he was himself as much deceived as the shareholders by the chairman and manager, and that he was not guilty of any breach of his duty in not making special investigation when he had no reason to suppose that anything was wrong. Mr. Justice Wright has come to the conclusion that Mr. John Cory was not only negligent, but fraudulent, or, at all events, guilty of misconduct equivalent to fraud as regards its legal consequences. The learned judge has arrived at this conclusion from the fact that in their reports the directors unjustifiably stated that they had made provision for bad and doubtful debts, whereas they had not. That the chairman and manager knew this is very likely true, but that Mr. John Cory knew it is quite another matter. The table of bad debts shows that sums were constantly written off for bad debts, and there is nothing to justify the inference that Mr. John Cory knew that these sums were insufficient, or that he did not honestly believe them to be sufficient. It may be that he ought to have been more vigilant than he was and that he should not have trusted his brother and Collins so much as he did. But negligence is one thing, fraud is another, and we are quite unable to adopt Mr. Justice Wright's view that Mr. John Cory acted fraudulently in making reports to the shareholders and laying the balance-sheets before them. At the close of the argument for the liquidator we intimated that, in our opinion, the charge of fraud against Mr. John Cory failed, and further study of the evidence strengthened this conviction. This is not only a very important matter to him as regards character, but to a great extent it relieves him from responsibility for anything done or omitted before June

14th, 1889. Another part of the case on which we are unable to agree with Mr. Justice Wright relates to the date of Mr. John Cory's retirement from the board. There can be no doubt that he sent in a letter of resignation (although it was not produced), and that his resignation was accepted at a meeting of directors held in London on December 18th, 1890, and that he was informed of its acceptance on December 22nd, 1890. There can also be no doubt that his resignation was concealed from the shareholders until after their meeting on January 21st, 1891, and that, in the report then laid before the shareholders, the name of Mr. John Cory appeared as a director. The evidence is conflicting upon the question whether his resignation was or was not mentioned at the meeting. On the other hand, he was not present at it, he swears he did not know that his name still appeared as a director. The learned Judge says he is unable to believe that John Cory did not know that his name so appeared, and in the view of the Court below Mr. John Cory improperly allowed his retirement to be concealed and allowed himself to be held out as a continuing director and as concurring in the report of January, 1891, which the learned Judge holds to be as fraudulent on Mr. John Cory's part as those which preceded it. We cannot adopt the learned Judge's view of this part of the case. We are satisfied that Mr. John Cory's resignation was *bona fide* and a fact, not a sham. He was not in fact a director after his resignation was accepted. He took no part in drawing up the report nor in recommending the dividend declared in January, 1891. Even if he received the report before the meeting and saw his name as a director and did not insist that his name should be struck out or that his resignation should be mentioned to the meeting (and the case against him cannot be put more strongly than this), even then we fail to see how such knowledge and omission can, without more, make him liable for misapplying the funds of the company, when in truth he took no part in their misapplication. With these preliminary observations we pass to consider Mr. John Cory's liability in respect of the dividends declared in July and December, 1889, and July, 1890. The liquidator has taken the view that the dividends declared and paid by the company when Mr. John Cory was a director were all paid out of the capital of the company, and the evidence adduced by the liquidator is directed to prove that such was the case. But when this evidence is examined it seems quite plain that the dividends were not in fact paid out of any part of the money forming the paid-up nominal capital of the company, but were paid, notwithstanding the loss of that capital and without making it good. What was done was this. The accounts were made up annually. Such losses incurred during the year as the

directors recognized as losses were written off or provided for by carrying sums of money over to a reserve fund, and the balance of the receipts in each year over the outgoings in the same year (after making some allowance for bad debts and deductions for sums carried over to the reserve fund) were treated as the profits of that year, and were divided as dividends. Losses written off in one year were not brought forward the next year so as to diminish the profits of that year, but were simply ignored, a fresh start being made every year and dividends being divided out of the excess of the annual receipts over the annual expenses. The effect of this was to throw all bad debts written off, and not provided for by an increase of reserve fund, on the capital, and to diminish the paid-up capital year by year and nevertheless to keep paying dividends out of the excess of the annual receipts over the annual expenses. It is obvious that this method of procedure, if long continued, would ultimately exhaust the paid-up capital of the company, and the first disastrous year in which the current outgoings exceeded the current incomings would produce great embarrassments. Such a mode of dealing with the company's assets, however reprehensible, must nevertheless not be confounded with paying dividends out of the paid-up capital of the company. The paid-up capital of a limited company cannot be lawfully returned to the shareholders under the guise of dividends or otherwise. Even an article of association authorizing the payment of interest to shareholders on the amounts paid upon their shares cannot authorize a payment of such interest out of capital. See *Masonic, &c., Co. v. Sharpe.* But paid-up capital which is lost can no more be applied in paying dividends than in paying debts. Its loss renders any subsequent application of it impossible. There was no such dealing with the paid-up capital of the company in this case as to amount to an illegal application of it. Further, it is not possible for the Court to say that the law prohibits a limited company, even a limited banking company, from paying dividends unless its paid-up capital is intact. Suppose a heavy unexpected loss is sustained. It must be met if there are assets to meet it with. The capital, even uncalled capital, must, if necessary, be applied to meet it. Such an application of capital is a perfectly legitimate use of it. There is no law which in the case supposed prevents the payment of all future dividends until all the capital so expended is made good. Many honest and prudent men of business would replace a large loss of capital by degrees and reduce the dividends, but not stop them entirely, until the whole loss was made good. No law compels them to pay none at all. There are cases in which no honest competent man of business would think of charging

particular debts or expenses to capital. We are certainly not prepared to sanction the motion that all debt incurred in carrying on a business can be properly permanently charged to capital, and that the excess of receipts over the other outgoings can be afterwards properly divided as profit, as if there had been no previous loss. No honest competent man engaged in trade or commerce would carry on business on such a principle. But, excluding cases in which everyone can see that a particular debt or outlay cannot be reasonably charged to capital, it may be safely said that what losses can be properly charged to capital and what to income is a matter for business men to determine, and is often a matter on which opinions of honest and competent men differ. See *Gregory v. Patchett.* There is no hard and fast legal rule on the subject. There can, however, be no doubt that if expenses or payments are obviously improperly charged to capital, and are so charged simply to swell the apparent profits and to make it appear that dividends may be properly declared, dividends declared and paid under such circumstances cannot be treated as legitimately paid out of profits, and can no more be justified than if they were paid out of capital. This was determined in *Bloxam v. The Metropolitan Railway Company*, and has been acted upon in many other cases—*e.g.*, *Rance's Case*, *In re The Oxford Benefit Building Society*, *The Leeds Estate Company v. Shepherd*, *In re The London and General Bank.* It would seem that Sir G. Jessel inclined to the opinion that a limited company could not pay dividends unless its paid-up capital was kept up. See *In re The Ebbw Vale, &c., Company.* But no decision has yet gone this length, and it has since been decided that dividends may be paid, even by a limited company, although its nominal capital is not kept up. See *Verner v. General and Commercial Investment Trust*, and the earlier case *Lee v. Neuchatel Asphalte Company.* What was lost there was fixed capital, and it is obvious that circulating capital or any other money employed in earning returns must be deducted from them in order to ascertain how much of them can be regarded as profit. If the returns do not exceed the money spent in procuring them (whether that money be called circulating capital or any other name) there can be no profits, and no ingenious process of book-keeping can alter the fact. It is not denied in this case that the annual receipts did exceed the annual outgoings, and the dividends having been paid out of the excess, the allegation that they were paid out of capital is not accurate. But, as already pointed out, it does not at all follow that the course adopted by the directors, in declaring dividends year after year as they did, was legally justifiable. It cannot be denied that the balance-sheet and profit and loss accounts concealed the

truth (as now known) from the shareholders, and were, as it now turns out, grievously misleading. The shareholders were never told that the paid-up capital was being constantly diminished by bad debts, as now appears to have been the case. The shareholders were told every year that proper provision was made for those debts, and now that the case has been thoroughly investigated it is really reduced to the question whether Mr. John Cory was justified in making the statements he did and in dealing as he did with debts which have now been ascertained to be bad. It is easy to be wise after the event, and there is danger in treating a director as knowing years ago what now appears to be the fact. But it is the duty of the Court to examine the state of things as they appeared to him when the dividends were declared, and to determine whether he was justified in what he did by what he knew and ought to have known. What he ought to have known is as important as what he knew. It was stated in a judgment delivered in this Court a few weeks ago in the *Lagunas Case*, that if directors act within their powers, if they act with such care as is reasonably to be expected from them having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, they discharge their equitable as well as their legal duty to that company. We believe this statement of the law to be correct, and we adopt it as our guide. It has been shown that in this case the dividends did not, in fact, come out of the paid-up capital of the company. Fraud is not established against Mr. John Cory, nor is there any proof that he was acting in the interests of his own friends or of himself and not *bona fide* with a view to the interest of the National Bank. The enquiry, therefore, so far as he is concerned, is reduced to the representations he made as to the position of the company and of his alleged want of care and attention to the affairs of the bank, and more particularly to his omission to find out that the manager was misleading the directors. In the *Lagunas Case* it was said, and we repeat, that the amount of care to be taken is difficult to define; but it is plain that directors are not liable for all the mistakes they may make, although if they had taken more care they might have avoided them. See *Overend, Gurney & Co. v. Gibb.* Their negligence must be not the omission to take all possible care; it must be much more blameable than that; it must be in a business sense culpable or gross. We do not know how better to describe it. Some useful observations justifying the expression gross negligence will be found in Lord Chelmsford's judgment in *Giblin v. McMullen*. It is not, however, necessary to enlarge on this subject. The care, which in any case can be reasonably expected to be taken, is, speaking generally, the measure of the

care which the law requires to be taken where there is no contract affecting the question. What we have to determine is whether Mr. John Cory was justified in making the statements he made, and whether he could be reasonably expected to find out more than he, in fact, knew. Bad and doubtful debts were constantly considered and provided for; some being written off; some by setting aside reserve capital; £12,000 odd were written off before 1890, and £13,600, or thereabouts, were written off in that year, and £70,000 was set aside for reserve capital. Such matters were considered by the directors. The accusation is that they did not do enough in this way. But here again, even if some debts known to the manager to be bad were treated as good, it is not proved that Mr. John Cory knew this or had reason to suspect that what was done was inadequate. His evidence is clear that he neither knew nor suspected that such was the case, and that he really believed that the provision was ample. The same question arises, Was it his duty to test the accuracy or completeness of what he was told by the general manager and managing director? This is a question on which opinions may differ, but we are not prepared to say that he failed in his legal duty. Business cannot be carried on on principles of distrust. Men in responsible positions must be trusted by those above them as well as by those below them until there is reason to distrust them. We agree that care and prudence do not involve distrust, but for a director acting honestly himself to be held legally liable for negligence in trusting the officers under him not to conceal from him what they ought to report to him appears to us to be laying too heavy a burden on honest business men. But this is the whole of Mr. John Cory's shortcomings as proved by the evidence. Even his letter of January 19th, 1888, on which Mr. Justice Wright placed so much stress, ceases to turn the case against him if he honestly believed it to be true, and if he was justified as a reasonably careful man in so believing; and we cannot say that he was not. Cases such as these are always cases of degree. In *Leeds Estate Company v. Shepherd* the directors trusted their manager and were held liable. They did not take the trouble to see that what he did was even apparently what he ought to have done. They delegated their functions to him. The case of *In re Denham & Co.* is more like the present, and there the director was held not liable. It must be now conceded that if Mr. John Cory had himself studied the weekly statements and quarterly returns, and had compared those for one period with those for another, and more especially if he had seen the letters addressed by the auditors to the directors, he would have been put upon enquiry, and would have found out, if he had not neglected his duty, that the

affairs of the bank were not in the flourishing condition which he believed them to be in. The existence of the letters written by the auditors and accompanying their certificates was very much relied on against Mr. John Cory. Those letters are not produced. They were never found by the liquidator. His knowledge of them is derived from copies furnished by the auditors. These letters warned the directors annually, in and after 1884, and especially in January, 1890, that there were matters which required investigation, and if Mr. John Cory had known or suspected that there were such letters, and he had omitted to make inquiries into the matters to which attention was drawn, he would plainly have neglected his duty as a director and have been guilty of negligence to the degree justifying the epithet gross. But he had no reason to suppose there were any such letters, and apart from them the auditors' reports justified him in supposing that all was right. The letter from the auditors of January 13th, 1890, to the secretary of the bank was answered by the secretary on February 13th, 1890 ; it had been laid before the board, and this was done on the 10th. But Mr. John Cory was not there. He was apparently present at a subsequent meeting at which the minutes of the meeting on the 10th were confirmed, but the matter did not attract his attention ; and, considering the terms of the minutes, this was very natural. We are satisfied that these letters from the auditors were fraudulently concealed from Mr. John Cory, and that he never knew of, or suspected, their existence. His ignorance of them was not attributable to negligence on his part. Mr. John Cory's omission to examine the weekly statements and quarterly returns is also, we think, excusable, although not on the same grounds, for they were known by him to exist, and were in the board room for inspection. We have had the advantage of an exhaustive examination of them, and of a comparison of long series of them, and we know the result and their full significance. But without a comparison of those for one period with those of an earlier period a director would derive little information that was really useful. No suspicion being aroused, Mr. John Cory's reasons for not examining them are natural, and his omission to examine them does not show want of reasonable care and attention on his part to the affairs of the bank. He had no reason to suppose that there were unsatisfactory debts beyond those written off and provided for. The evidence when carefully sifted unquestionably shows that Mr. John Cory might have found out that he was deceived by the general manager, and that the dividends declared were not in a business sense warranted by the profits made. On the other hand, the evidence shows that although he was deceived he neither knew nor suspected it. We are not prepared to say

that he is guilty of any breach of duty in not discovering that those whom he trusted were misleading him; nor that in point of law he was guilty of any breach of duty in recommending the payment of dividends as and when he did. A director does not warrant the truth of his statements; he is not an insurer. But if he makes misstatements to his shareholders he is liable for the consequences unless he can show that he made them honestly, believing them to be true, and took such care to ascertain the truth as was reasonable at the time. This, we think, Mr. John Cory did. It follows that Mr. John Cory is not only not liable to make good the dividends declared, but also that he is not liable to refund those which he himself received as a shareholder, whether before or after June 14th, 1889, for there was no breach of trust in this matter by him. His conduct before that date was not more remiss than it was afterwards. As regards the advances made to directors without security between June 14th, 1889, and December 18th, 1890. the lien given by Article 15 came into existence automatically, and gave the company an equitable charge on the shares with a power of sale, which is very important. It certainly constituted a security—*The General Exchange Bank*. Article 98 enumerates what the board may do, and presupposes consideration and attention by them; and we are of opinion that no credit was to be given and no advance was to be made to a director without deliberation by the board nor without security, and if so made it would be difficult to justify the advance by falling back on the lien conferred by Article 15. But we cannot go to the length of saying that shares in the bank might not be accepted as security on reasonable deliberation if of adequate value. We do not overlook the fact that their value depends on the value of the assets of the company lending its money on them. This renders care and deliberation all the more necessary whenever the borrower was a shareholder or a director. But in either case we are of opinion that shares in the bank might be accepted as security if the board considered them sufficient as regards value. Suppose the board considered a proposed advance, and, being satisfied that the shares would sell for considerably more than the sum advanced, authorized an advance and obtained a deposit of the share certificates of the borrower as security. We do not think they would have failed in their duty, even if the borrower were a director. This being so, we cannot hold the board liable in point of law for omitting to obtain the certificates; for their lien and power of sale under Article 15 would not be defeated by the absence of the certificates, and we do not understand that any loss has been sustained by the bank by reason of the absence of certificates. In substance, therefore, we agree with the view of Mr. Justice

Wright on this point. Now let us see what was done by Mr. John Cory. Large advances were made to some directors in 1889 and 1890. We leave out of account the advances made in 1891, as Mr. John Cory was not then a director. We also pass over the errors in figures which Mr. Norris has pointed out. It is proved that in 1889 and 1890 Mr. Crawshay, one of the directors, was constantly allowed to overdraw. The branch manager at Bridgend perpetually drew attention to this and wrote for instructions, but apparently got none. Crawshay was a large shareholder in the company, and the market value of his shares exceeded his advances and overdrafts. Other deeds and documents were apparently also held by the board as a security. Other similar cases are given by the liquidator where these advances and overdrafts have resulted in large losses. The directors clearly regarded the lien as a security, and a "stop-share" book was accordingly ordered to be kept in 1884, in which all shareholders' overdrafts were to be entered. There is no proof that if the shares could in point of law be taken as security they were insufficient at the time they were taken. The securities were never reported to the board as insufficient; nor did Mr. John Cory know or suspect they were so. His cross-examination on these matters shows that many very material facts were concealed from him—*e.g.*, the fact that a director was a partner in a borrowing firm; the amounts to which some of the directors obtained advances or were indebted to the bank; the insufficiency of the securities. Moreover several of the advances which have resulted in loss were not sanctioned by him, and were made without his knowledge. The question of course again arises whether Mr. John Cory ought not to have been more vigilant. The observations already made on this head need not be repeated. Nor is it necessary to examine in detail his liability for other improper advances. Here again his answer is the same, and his liability depends on his omission to find out the facts. His liability for such omission has been already considered and negatived. Having arrived at the above conclusions, it is unnecessary to decide whether Mr. J. Cory's counsel were right in their contention that, assuming Mr. J. Cory to be liable to make good the dividends declared whilst he was a director, the liquidator, as representing the shareholders in the bank, could not have recovered such dividends from him. The argument was that all moneys recovered by the liquidator would have to be distributed amongst the shareholders, who had already had the benefit of the dividends improperly declared, so that they would in effect be paid twice over. In the course of the argument it was pointed out that the money sought to be recovered was, if recoverable, an asset of the company, and that the liquidator was the person to get it in,

and that *Turquand v. Marshall* had no application to claims by incorporated companies. We pointed out that the money which had been divided in years gone by had been paid and received as profits, and not as capital, and Mr. J. Cory could not treat the shareholders, whom on the present assumption he would have misled, as having received the dividends as capital. We said that we agreed with Lord Justice Cotton's observations in *Filcroft's Case*, as we understood them—viz., the Court could and would prevent the liquidator from taking any proceedings which were useless and vexatious, but that this proceeding in the case supposed would be neither the one nor the other. On this part of the case we agreed with Mr. Justice Wright. Lastly, we think it only due to the liquidator to add that, although Mr. J. Cory has succeeded in his appeal his conduct justified the closest scrutiny. But the order appealed from ought to be reversed, and, having regard to the serious charges made against him, the liquidator must pay Mr. J. Cory his costs both of the summons and of his appeal.

Queen's Bench Division, England.

Baker v. Lipton, Limited*

A cheque sent by post, except on the request of the creditor, is so sent at the sender's risk.

This was an action brought by Mrs. A. L. Baker, the administratrix of George Bartrick Baker, deceased, against Messrs. Lipton, Limited, to recover £112 10s., being part of a sum of £125 paid by the deceased to the defendants on or about March 10th, 1898, on applying for shares in the defendant company, after giving credit for £12 10s. payable to the defendant company on 25 shares which only were allotted. It appeared that a few days before his death the late G. B. Baker applied to the defendant company for an allotment of shares, and paid £125 as application money. The application was in the following form:—

"Lipton, Limited. No............ Form of application for ordinary shares (to be retained by the bankers). To the directors of Lipton, Limited. Gentlemen, having paid to the company's bankers the sum of £............ being a deposit of 2s. 6d. per share on application for............ordinary shares of £1 each in the above company, I request you to allot me that number of shares upon the terms of the prospectus, and I hereby agree to accept the same or any less number, and I authorize you to place my name

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upon the register of members in respect of the shares so allotted to me, and I agree to pay the further instalments upon such allotted shares as required by the terms of the prospectus, and I also agree with the company, as trustee for the directors and other persons liable, to waive any claim I may have against them for not more fully complying in the said prospectus with the requirements of section 38 of the Companies Act, 1867.

Ordinary Signature ....
Name (in full) ....
(Mr., Mrs or Miss) ....
Address (in full) ....
Profession or business ....
Date ....

"All cheques to be made payable to bearer, and crossed to one of the company's bankers.

"A separate cheque must accompany each separate application."

The company allotted only 25 shares and appropriated £12 10s. in payment of the money due on application and allotment of the 25 shares. On March 29th, 1898, Baker died. On March 30th, 1898, a cheque for £112 10s. was drawn (the balance of the £125) by the defendant company to the order of G. B. Baker, and crossed generally, and on March 31st was posted, together with the allotment letter of the 25 shares, to G. B. Baker at the office of the *Pall Mall Gazette*, of which he was city editor, and which was the address furnished by Mr. Baker on his application. The cheque bearing an endorsement "Geo. Bartrick Baker," was subsequently paid into Martin's Bank, Limited, Lombard street, by the Barbeton Development Syndicate, Limited, and credited to the syndicate. Baker's endorsement was admittedly forged by some person. The defendants had no knowledge of the death of Baker or that anything was wrong with the cheque until August, 1898.

Mr. Justice Ridley, in giving judgment, said that there was no defence to the action. He regretted that it was a case in which one of two innocent persons must suffer. There was no implied request to return the money by post. In a case like the present, where there was no request by the plaintiff that a cheque should be sent by post, he thought that the cheque was so sent at the risk of the sender. It did not constitute payment until the cheque was received. He was also of opinion that, even if defendants had authority to send the cheque by post, it was determined by the death of Baker. There must be judgment for the plaintiff, with costs. Judgment accordingly.

Queen's Bench Division, England

Tate v. Wilts and Dorset Bank, Limited*

A bank permitted a party to open an account in which the first deposit consisted of a crossed cheque in his favor, against which he was not to draw until the cheque was paid.

Held, that this did not constitute negligence which would deprive the bank of the protection afforded by the Bills of Exchange Act with respect to crossed cheques collected for a customer.

This was an action for the recovery from the defendants of the sum of £25, being the amount of a cheque dated 25th May, 1898, drawn by the plaintiff on his bankers, the York City and County Banking Company, Limited (Sheffield branch), payable to the order of "George Dixon" and crossed, and which sum of £25 was received by the defendants from the York City and County Banking Company, Limited, and placed by the defendants to the credit of the said George Dixon, under his real name of George Ernest Laidman.

The action was heard at the Sheffield County Court on the 5th December last, before Judge Waddy, Q.C., and adjourned to the 15th January, when formal judgment was given for the plaintiff for the amount claimed and costs. From this judgment the defendants appealed.

There was practically no dispute as to the facts, which were established as follows:—

The plaintiff, on 25th May, 1898, forwarded to George Dixon the cheque for £25 in part payment for scrap-iron under the circumstances set out in the copy correspondence.

Plaintiff admitted that he knew nothing about Dixon, and did not make enquiries nor ask for references, and did not even mark the cheque "not negotiable." Dixon's real name was George Ernest Laidman, and on the 26th May he took the cheque in question to the defendant's bank, where he saw Mr. Drew, one of the cashiers, and requested them to cash it, explaining that his real name was George Ernest Laidman, but that he traded as a scrap and general merchant as "George Dixon," and was the payee of the cheque; he was a stranger to the bank, and Mr. Drew told him he could not cash the cheque for him, and Laidman then asked him to collect it, and said he

***Journal of the Institute of Bankers*, London.

should probably open an account with the £25. Defendants arranged to collect the cheque, and to ask the bank on which it was drawn to wire at once whether it was good. The next day defendants received a telegram that the cheque was paid, and placed the £25 to Laidman's account, and Laidman at once drew a cheque against it, as is shown by the copy account sent herewith. No scrap-iron ever was delivered by Laidman to the plaintiff, and it was afterwards ascertained that Laidman had already been convicted for obtaining money under false pretences, and that he did not actually carry on any trade, and having ascertained this, and being satisfied that the whole thing was a fraud from beginning to end, the plaintiff claimed back the £25 from the defendants.

The plaintiff's advocate based his claim upon the following points :—

1. That the defendants had been guilty of negligence in collecting the cheque for an entire stranger.

2. That the cheque having been obtained from the plaintiff by fraud, the property in it never passed out of the plaintiff, and that the defendants could have no better title than Laidman, who paid it to them.

3. That the defendants had been guilty of conversion of property belonging to the plaintiff—*i.e.*, the cheque.

4. That the defendants were simply agents for Laidman, and could have no better title than he had.

MR. JUSTICE DARLING : I do not think that what occurred in this instance in the creation of this cheque was at all like, or, at all events, was on a par with what occurred in the case of *Cundy v. Lindsay*. It seems to me that in this case Mr. Tate undoubtedly gave a cheque which he drew in favour of George Dixon. The person in whose favour he drew it called himself George Dixon, but his real name was Laidman, and he had very good reasons—reasons sufficient to him—for calling himself by another name, but Mr. Tate was unlike the persons who created the credit in *Cundy v. Lindsay*, in this he did not believe himself to be dealing with any particular George Dixon whom he knew. It is true he did not know that he was dealing with a person named Laidman. If he had known he was dealing with Laidman, very likely he would not have dealt with him, but though he did not know he was dealing with Laidman, he did not suppose he was dealing with any definite person known

to him as being George Dixon, and known as George Dixon. It seems to me that makes a difference. Then he enters into what upon the face of it seems to be a contract. Was it a contract? I think that *de facto* it was. Then we are within the reasoning of the Court in *Cundy v. Lindsay*, where Lord Cairns says this:—"The result, therefore, my Lords, is this, that your Lordships have not here to deal with one of those cases in which there is *de facto* a contract made which may afterwards be impeached and set aside, on the ground of fraud, but you have to deal with a case which ranges itself under a completely different chapter of law, the case, namely, in which the contract never comes into existence." Here we are, I think, dealing with a case in which the contract does come into existence. It is true that it was a voidable contract. It is a contract which Mr. Tate might on discovering the real facts have avoided and if the cheque had remained in the hands of Laidman, and Laidman had presented it, and he had found out that Laidman had obtained it by this fraud, he could have refused to pay Laidman. But that would have been upon grounds quite other than the grounds which were held to be sufficient in the case of *Cundy v. Lindsay*. But now it is said Laidman, not being able to recover upon this cheque, the bank who took it, the Wilts and Dorset Bank, were merely the agents of Laidman. I must say for my own part I do not think that that is the result of the evidence. I do not think that they were merely the agents for Laidman. I think that the true effect of what happened was this. Laidman went to them and asked them if they would cash him this cheque. They did not say anything about the cheque, and they said neither "we will" nor "we won't," but they first of all ascertained whether the cheque would be met if presented. They ascertained that it would be met. Then they told Laidman that they would cash it, but cash it in what circumstances? I do not think that they did say that they would cash it merely as his agents, but he was going to open an account with them. He was not a customer at the moment, but he was going to become a customer if that cheque was collected. The bank would allow Laidman to open an account if he brought them, say, twenty-five sovereigns; they would not allow him to open the account if he brought the cheque, as to which it was problematical whether it would be cashed or not, but having ascertained that the cheque was equivalent to cash, they allowed him to open the account, and thereupon they allowed Laidman to draw against the money which they obtained from the cheque. I do not agree that the true effect of the evidence is that they were agents for Laidman. If I am right there, a good deal of the argument we have heard is beside the point. I will assume for the sake of argument they

were. Assume for the sake of argument that they were merely agents of Laidman, then what have they done? Not knowing that Mr. Tate is in a position, by reason of the fraud of Laidman, to repudiate his contract with Laidman, they being the agents (as for the sake of argument I treat them) pay over the money which they have received from Mr. Tate through the medium of a bank to their principal, Laidman. But they do it without any kind of knowledge that the contract is one which Mr. Tate may repudiate. I think that thereupon they are within the rule laid down in *Holland v. Russell*, which is reported in *Best v. Smith*, and in *Best v. Smith*, because it was appealed against and was affirmed upon appeal. That rule, to put it shortly, is "That A, being only an agent, of which B was aware, and having, without notice of B's intention to repudiate the contract, paid over to his principal the amount received from the underwriters, B was not entitled to recover back from A his amount of the insurance." It is not necessary for me to refer particularly to the judgment, there are passages which I might read to substantiate this doctrine, but it does seem to me that this covers what was done in this case by the bank when they paid the money over to Laidman. It is said that they did that in some way negligently. I am unable to see how anything that they did negligently affects this. They did not do it fraudulently. They did not do it in any kind of way in bad faith. The negligence found by the Judge is this:—"That they acted negligently in collecting the amount of a crossed cheque for a stranger without making due enquiry as to his title." To my mind that is only another way of saying they acted negligently in opening an account with a person who was going to commence the transactions between them by first of all paying the cheque, as to which they did not know his title. It does not appear to me that the real negligence is, what was done here, the paying the money over to Laidman. It is not suggested that the negligence was the paying it over to Laidman without knowing whether he had a good title or whether it was a title which Mr. Tate could repudiate. The negligence suggested is the negligence in collecting the amount for a stranger without making enquiry as to what title he had. If any negligence would affect this case, and take it out of the rule laid down by *Holland v. Russell*, I cannot see that any negligence of that kind would take it out of it, I think the appeal must be allowed.

Mr. Justice Channell concurred.

Queen's Bench Division, England

Jenkins & Sons v. Coomber *

It was agreed between the plaintiffs and A, who owed them money, that they should draw a bill on him, and that the defendant, who was A's father, should endorse it to guarantee payment. They accordingly drew a bill on A, to their own order, and, without endorsing it, gave it to A, who returned it to them accepted by himself and endorsed by the defendant. They then endorsed it, and it was not paid at maturity.

In an action against the defendant —

Held, that he was not liable as endorser under section 55 of the Bills of Exchange Act, 1882, nor as having incurred the liabilities of an endorser under section 56, since at the time he put his name on the bill it was not complete and regular on the face of it, as it lacked the plaintiff's endorsement, nor was he liable on a contract of suretyship since the provisions of the Statute of Frauds were not satisfied.

Appeal from the Westminster County Court.

The action was brought on a bill of exchange, which was in the following form :—

London, Aug. 5, 1897

£57 os. od.

Three months after date pay to our order the sum of Fifty-seven pounds for value received.

(Sgd) J. Jenkins & Sons

To Mr. Arthur Coomber.

Accepted payable at the London and County Bank.

(Sgd.) Arthur Coomber

Indorsed : "Alfred Coomber"

"J. Jenkins & Sons"

It appeared that in 1897 Arthur Coomber, who was the son of the defendant Alfred Coomber, owed money to the plaintiffs, Jenkins & Sons. Arthur Coomber requiring time for payment, it was arranged between him and the plaintiffs that they should draw on him at three months, and that his father, the defendant, should endorse the bill to guarantee payment. The plaintiffs accordingly drew this bill upon him to their own order, and, without endorsing it, gave it to Arthur Coomber. He took it to the defendant, who wrote his name on the back of it, receiving no consideration for doing so, but, as he said, "in order to carry his son a bit further." Arthur Coomber then returned the bill to the plaintiffs, accepted by himself and endorsed by

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the defendant, and the plaintiffs afterwards endorsed it. The bill was not paid at maturity, and this action was brought by the plaintiffs against Alfred Coomber as endorser.

The County Court judge gave judgment for the defendant, and the plaintiffs appealed.

WILLS, J.—I am of opinion that the County Court judge was right in this case. I do not think that the Bills of Exchange Act, 1882, was intended to effect such an important alteration in the law as to override the decision of the House of Lords in *Steele v. McKinlay*. That decision seems to me to be in force at the present time. It is clear that, in the present case, when the defendant wrote his name upon the bill it was not complete and regular on the face of it. Nor, indeed, did it become so at any time. Section 56 of the Bills of Exchange Act, 1882, provides that a person who signs a bill otherwise than as drawer or acceptor incurs the liabilities of an endorser "to a holder in due course." But by section 29 a "holder in due course" is a holder who has taken a bill complete and regular on the face of it. Section 56 therefore does not apply. This was not on the face of it a regular and complete bill of exchange, since when the defendant endorsed it the bill had not been endorsed by the plaintiffs, to whose order it was payable. But then it is said that the defendant is liable under section 55, sub-section 2, as an endorser because his name is on the back of the bill. The Bills of Exchange Act certainly does not give much assistance as to the meaning to be attached to the word "endorsement." It says (s. 2): "'Endorsement' means an endorsement completed by delivery"; but it nowhere says what constitutes "an endorsement." Lord Watson, in *Steele v. McKinlay*, draws a distinction between a person who in the nature of things could be the endorser of a bill and a stranger who writes what if he had a right to endorse would be an endorsement on the bill, although he has no right to the contents. He says that it is perfectly consistent with the principles of the law merchant that a person who writes an endorsement with intent to become a party to a bill should be held (notwithstanding that he has not, and therefore cannot give, any right to its contents) to be subject to all the liabilities of a proper endorser. In that case, as in this, the difficulty was that, though the person who wrote his name on the back may have meant to become a party to the bill, he never did become so in fact because the bill was never made complete, so far as he was concerned, by the necessary endorsement of the drawer. It seems to me here that the law merchant, unless it was materially altered by the Bills of Exchange Act, 1882, which I do not think, has no application. The cases which have been cited by counsel for the appellants

to establish the liability of the defendant as endorser are all cases where the bill was a complete and perfect instrument. Here, as I have already said, the bill was not a complete negotiable instrument until it had received the endorsement of the drawers. The result of those cases is that, where there is an agreement between the parties which precludes the notion that the holder of the bill is liable to the endorser, the holder is not prevented from suing the endorser on the ground of circuity of action. The general principle since the Act of 1882 seems to me to be exactly as it was laid down in *Steele v. McKinlay*, and the contract of indemnity on which the plaintiff relies is one which is not recognized by the law merchant, but which arises solely from an agreement between the parties. It is, however, here relied upon as giving a primary liability against the defendant upon this bill of exchange. That, as Lord Watson points out in *Steele v. McKinlay*, will not do. If the agreement exists at all, it must exist as a contract of suretyship, and for that purpose it must satisfy the requirements of the Statute of Frauds.

For these reasons I am of opinion that this appeal must be dismissed.

Kennedy J.—I am of the same opinion, and for the same reasons. I do not think that the doctrines laid down in *Steele v. McKinlay* have been varied by the Bills of Exchange Act, 1882. In the edition of that Act by Mr. Chalmers, he expressly gives *Steele v. McKinlay* as an illustration to section 56, without a suggestion that the law laid down in that case has in any way been altered. This document was, according to the law merchant, irregular, and therefore the defendant is not liable upon it to the plaintiffs. If it is sought to use it as an agreement of suretyship, it is insufficient to satisfy the provisions of the Statute of Frauds.

Supreme Court of Canada

Her Majesty the Queen (Plaintiff), Appellant; and the Honourable A. W. Ogilvie (Defendant), Respondent*

A bank borrowed from the Dominion Government two sums of $100,000 each, giving deposit receipts therefor respectively, numbered 323 and 329. Having asked for a further loan of a like amount it was refused, but afterwards the loan was made on O., one of the directors of the bank, becoming personally responsible for repayment, and the receipt for such last loan was numbered 346. The Government having demanded payment of $50,000 on account that sum was transferred in the bank books to the general account of the Government, and a letter from the president to the finance department stated that this had been done,

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enclosed another receipt numbered 358 for $50,000 on special deposit, and concluded, "Please return deposit receipt No. 323—$100,000 now in your possession." Subsequently $50,000 more was paid and a return of receipt No. 358 requested. The bank having failed the Government took proceedings against O. on his guarantee for the last loan made to recover the balance after crediting said payments and dividends received. The defence to these proceedings was that it had been agreed between the bank and O. that any payments made on account of the borrowed money should be first applied to the guarantee loan, and that the president had instructed the accountant so to apply the two sums of $50,000 paid, but he had omitted to do so. The trial judge gave effect to this objection and dismissed the information of the Crown.

Held, reversing the judgment of the Exchequer Court, Taschereau and Girouard, JJ., dissenting, that as the evidence showed that the president knew what the accountant had done and did not repudiate it, and as the act was for the benefit of the bank, the latter was bound by it; that the act of the Government in immediately returning the specific deposit receipts when the payments were made was a sufficient act of appropriation by the creditor within Art. 1160 C.C., no appropriation at all having been made by the debtor on the hypothesis of error; and if this were not so the bank could not now annul the imputation made by the accountant unless the Government could be restored to the position it would have been in if no imputation at all had been made, which was impossible, as the Government would then have had an option which could not now be exercised.

Appeal from a judgment of the Exchequer Court of Canada dismissing an information by the Attorney-General for Canada on behalf of the Crown against the defendant. (JOURNAL, Vol. V, p. 256).

The material facts are sufficiently stated in the above head-note, and more fully in the judgment of the majority of the Court delivered by Mr. Justice King.

KING, J.—This is an appeal from the judgment of the Exchequer Court (per Davidson, J., *pro hac vice*) dismissing the claim of the Crown.

The claim was based on a letter of respondent dated 11th May, 1883, guaranteeing a loan or deposit of $100,000 then being made to the Exchange Bank of Canada at the request of the respondent.

The Exchange Bank had its head office in Montreal. Its president was one Thomas Craig, and Mr. Ogilvie was one of the directors.

In April, 1883, the bank was in financial difficulty and applied to the Finance Department for a loan of $100,000. The loan was made on the 12th of the month by way of special deposit, at 5 per cent. interest withdrawable on thirty days' notice. The deposit receipt given by the bank was numbered 323.

Four days afterwards the bank made application for another $100,000, and on the 18th of April received this loan also, giving their deposit receipt for the amount. This deposit receipt was numbered 329, and is as follows:

No. 329

$100,000 MONTREAL, 17th April, 1883

The Exchange Bank of Canada acknowledges having received from the Hon. the Receiver-General the sum of one hundred thousand dollars, which sum will be repaid to the Hon. the Receiver-General, or order, only on surrender of this certificate, and will bear interest at the rate of five per cent. per annum, provided thirty days' notice be given of its withdrawal.

The bank reserves the privilege of calling in this certificate at any time on written notice to the depositor, after which notice all interest on the deposit will cease.

If when notice be given by the depositor of withdrawal, the bank elects to pay immediately, it shall have the right to do so.

(Sd.) T. CRAIG,
President

Entered.
(Sd.) ERNEST D WINTLE,
p. Accountant

Three days later the bank wrote the department that another $100,000 would be required to place them in an independent position, but the department declined to make such further loan.

Then Mr. Ogilvie came to Ottawa, and upon his undertaking to guarantee such further deposit, it was made on the 12th of May, 1883.

The letter of guarantee is as follows:

OTTAWA, 11th May, 1883

MY DEAR SIR,—I beg that the Government will place a further sum of $100,000 at deposit with the Exchange Bank on the same terms as the former deposits of $200,000; and on the Government agreeing to comply with this request I hereby undertake to hold myself personally responsible for the further deposit of $100,000.

Yours very truly,
(Sd.) A. W. OGILVIE

J. M COURTNEY, ESQ.,
Deputy Minister of Finance, Ottawa

The deposit receipt given in respect of this loan was numbered 346, and is as follows:

No. 346

$100,000 MONTREAL, 12th May, 1883

The Exchange Bank of Canada acknowledges having received from the Hon. the Receiver-General the sum of one hundred thousand dollars, which sum will be repaid to the Hon. the Receiver-General or order, only on surrender of this certificate, and will bear interest at the rate of 5 per cent. per annum, provided thirty days' notice be given of its withdrawal.

If when notice be given by the depositor of withdrawal, the bank elects to pay immediately, it shall have the right to do so.

(Sd.) T. CRAIG,
President

Entered,
(Sd.) ERNEST D. WINTLE,
p. Accountant

On the 31st of May, 1883, Mr. Courtney, for the Finance Department, wrote to the bank that "on the 1st day of July next the Dominion Government will require the sum of $50,000 to be transferred from the special deposit account with your bank to the general account."

In consequence of a letter from the bank of the 29th June requesting that the repayment be postponed until after the 20th July, Mr. Courtney wrote on the 30th of June to the bank as follows:

I am sorry to say that I must have the $50,000 turned into ordinary cash on Tuesday. I had intended to have drawn out immediately (*i.e.* after it had been transferred to general account) in order to meet payments on account of subsidies, but this I will do, I will only draw $5,000 a day for ten days. I may as well inform you that we shall want another $50,000 to be turned into cash on the 1st August.

The following further correspondence in reference to this payment then took place:

Mr. Courtney to the President (Managing Director).

OTTAWA, 7th July, 1883

SIR,—Referring to previous correspondence, I have now the honour to request that you will be good enough to forward to me at your earliest convenience a receipt for the $50,000 which was to be turned into cash on the 1st instant, and also a fresh receipt for $50,000 at interest, and will return you one of the receipts for $100,000 which we now hold. Pray attend to this without delay.

James M. Craig, pro Manager, to Mr. Courtney.

MONTREAL, 9th July, 1883

As requested in your letter of 7th instant I now forward the deposit receipt of this bank No. 358 in favour of the Hon. the Receiver-General for $50,000, and enclose our receipt for $50,000 placed to the credit of the Finance Department account. Please return deposit receipt No. 323—$100,000 now in your possession and oblige.

Mr. Courtney to the President of the bank:

OTTAWA, 10th July, 1883

I have the honor to acknowledge the receipt of your letter of the 9th instant enclosing special deposit receipt for $50,000, and I have now the honour to enclose herewith your deposit receipt No. 323 of the 13th April, 1883, for $100,000.

James M. Craig, pro. Manager, to Mr. Courtney, of 11th July, acknowledging receipt of deposit receipt No. 323.

Then with the respect to the withdrawal or repayment of the second $50,000, of which Mr. Courtney had given notice on 30th June for the 1st of August, there is the following correspondence:

Mr. Toller, acting Deputy Minister of Finance, to the President of the bank:

July 31st, 1883

In reply to your letter of yesterday's date, asking that the $50,000 which is to be taken from interest to ordinary cash to-morrow should be allowed to remain until the 1st of September, I regret to say that I am unable to comply with your request, as my instructions from Mr. Courtney were that the money was to be paid on the day named by him....

President of bank to Mr. Toller, asking that Government will draw on the general account only at the rate of $10,000 every third day.

Toller to President of bank, 15th August.

As I wrote to you the end of last month my instructions were to call upon you to place $50,000 (of which due notice has been given) at the credit of the Receiver-General's ordinary cash from the amount now at interest. I do not see how I can consent to its remaining until the 1st of September. I shall, however, be most happy to comply with your request about drawing out the money. Please send us a receipt showing that the amount has been transferred from "interest" to current account with the accrued interest thereon.

James M. Craig, Pro. Manager, to Deputy Minister of Finance, 16th August, 1883.

I beg to acknowledge the receipt of your letter of the 15th instant, and herewith enclose receipt showing the current account with the department credited $50,315.07. Please return deposit receipt No. 358—$50,000, in favour of the Receiver-General and oblige.

The bank suspended payment on the 17th of September, 1883, and on the 5th of December a winding-up order was issued under which the affairs of the bank have been fully wound up.

The Crown filed a claim for the amount of the two deposits as per Receipts Nos. 329 and 346, with interest thereon, and for the further sum of $37,840.24 in respect of other transactions, and received in dividends a sum $160,503.21, or sixty-six and three-eighths per cent.

The principal question relates to the application of the two payments of $50,000 each.

For the Crown it is contended that they were made upon the first indebtedness evidenced by the special deposit receipt No. 323, and by the receipt No. 358, given in substitution for the one-half of such loan remaining unpaid after the payment of the first sum of $50,000.

The respondent contends that such alleged application is null and void for error and want of authority in the person making it, and that in such event by the law of Quebec (which is claimed to be applicable) the payments are to be applied to the discharge of the guaranteed debt, thereby relieving the debtor of his obligations at once to the creditor and to his surety.

Arts. 1160 and 1161 (in part) of the Civil Code are as follows:

(1160.) When a debtor of several debts has accepted a receipt by which the creditor has imputed what he has received in discharge specially of one of the debts, the debtor cannot afterwards require the imputation to be made upon a different debt except upon grounds for which contracts may be avoided.

(1161.) When the receipt makes no special imputation, the payment must be imputed in discharge of the debt actually payable which the debtor has at the time the greater interest in paying.

It may be noticed in passing that Art. 1160 seems to relate to cases where the creditor has made the imputation, and not to cases where the imputation has been made by the debtor.

The error assigned as sufficient under Art. 1160 to avoid the imputation of payment of the first loan or debt is briefly this:

It is said that in consequence of the bank having agreed with Mr. Ogilvie that the first moneys paid would be paid on account of the guaranteed debt, Thomas Craig, the bank president, gave instructions to the accountant, James M. Craig, so to apply the two sums of $50,000, but that without the knowledge or consent of the bank he omitted to do so, but on the contrary purported to make the payments on account of the first of the loans. It is not suggested that the Government knew anything of these transactions or understandings between the bank and Mr. Ogilvie, or of the instructions to James M. Craig.

The learned judge has upheld these contentions of the respondent, and has directed that the payments be applied to the discharge of the guaranteed indebtedness, and dismissed the information of the Crown.

It may for present purposes be assumed that the view taken in the court below as to the case being governed by the law of Quebec is correct.

It has not been contended that the guarantor's responsibility under the terms of his letter of guarantee would cease whenever the bank's special deposit indebtedness to the Crown should become reduced to $200,000, the amount at which it then stood. If it had been so contended, it might have been replied that the guarantee was that of a particular debt then being about to be contracted, and referred to as "the further deposit of $100,000." The several loans were distinguished by the respective deposit receipts or contracts entered into in respect of each, and which were not entirely similar in terms. The contract numbered 346 was that for the performance of which by the bank Mr. Ogilvie made himself responsible.

Then as to error and want of authority on the part of James Craig in purporting to make the imputation of payment.

The act of an agent binding the principal needs to be not only within the scope of the authority, but for the employer's benefit. As to the last point first. The natural effect of Craig's imputation was to maintain the failing credit of the bank with its creditor, by preserving to the latter the personal security of Mr. Ogilvie, while at the same time the total liability was

reduced. It was therefore clearly an act done by James Craig for the benefit of the bank under the circumstances in which it was placed.

Then as to the scope of Craig's authority. It seems manifest from the testimony of the bank president that, in the condition in which the bank was, things were left to be done by the accountant acting for the manager which perhaps at other times might not have been left to him. Thomas Craig, the president, says:

> At that time things were in a pretty bad shape and we did not know where we were standing, and instead of doing this myself, as I ought to have done according to the agreement of the board (referring to the agreement with Mr. Ogilvie), by some means or other it was done by the accountant.

That is to say, owing to the confusion the president by some means or other left it to the accountant acting for him to transact this part of the bank's business. It further appears from the instructions said to have been given by the president to the accountant that the latter was recognized and treated as the officer charged with the signification of the imputation of payments.

Throughout the correspondence, beginning with the forwarding of the first deposit receipt, James Craig acts at every stage of the transactions as on behalf of the president, and with his knowledge.

In the letter to the bank president of 10th July, 1883, Mr. Courtney referred to James Craig's letter of the day before and enclosed "deposit receipt No. 323 of the 13th April."

There can be no reasonable question then that the president knew of what had been done, for the deposit receipt was referred to not only by its number but its date, and not only did he not repudiate it, but concluded the arrangement by making out fresh deposit receipt No. 358.

Supposing, however, that there was error, the annulment of the imputation by James Craig would still leave the act of the Crown in immediately sending back the deposit receipts as a sufficient act of appropriation on their part, no appropriation at all having been made by the bank on the hypothesis of error.

And even if this were not so, the bank could not get a benefit from their own error, and annul the imputation made by Craig, unless the creditor could be put in the same position as he would have been if there had been no imputation at all by the bank, and for obvious reasons no option can now be exercised by the Crown. There was clear prejudice to the Crown in being deprived of an option that would have belonged to it if Craig's act had, on the instant of making it, been nullified.

There seems, therefore, upon these several considerations, to be no satisfactory ground for treating the case as though there had been no appropriation of payment either by the bank or the Crown.

It is further suggested that the imputation was invalid because not made at the time of payment.

With regard to the first payment of $50,000, Craig's letter of 9th July advises that the amount has been placed to the credit of the Finance Department, *i.e.*, to the credit of the general or current account, and simultaneously asks for return of deposit receipt No. 323. This was at once assented to by the Crown (whose assent may be considered necessary upon a part payment of the debt), and acted upon by the return of the receipt asked for. Craig's letter constitutes an immediate appropriation. If not, there was the appropriation instantly made by the Crown upon being notified of the fact of payment, or it was made by the joint assent to receiving part payment on account of such debt. In either way, therefore, there was valid application to the first debt.

If the actual payment of the money upon cheques drawn against general account be regarded, it must on principle be considered that the previous declarations and consents as to the application of the payments continued to operate so as to govern and explain the act of payment when it should take place, and to determine its character and quality.

So as to the second sum of $50,000, Craig's letter of 16th August advises of the transfer of the amount from the interest account to current account, and at the same time requests the return of deposit receipt No. 358. This also was acted upon and the deposit receipt returned. Until such return of the deposit receipt the transaction was incomplete.

Again, regarding the payments as not made until payment of the cheques drawn against general account, such subsequent payments would in the way already mentioned be considered as being made in pursuance of the subsisting declaration of intention and consent.

As to the dividends received by the Crown in the winding-up, the debts being distinct, the surety is entitled to have a ratable amount applied towards the reduction of the guaranteed debt.

As to interest, the respondent in his letter of 11th of May requested that the further deposit of $100,000 be made on the same terms as the former deposits of $200,000, and these terms included payment of interest by the bank at 5 per cent.; the obligation to be responsible for the deposit therefore reasonably includes interest at the named rate.

The result, therefore, is that the appeal is to be allowed with costs here and below, and judgment to be entered for the Crown for the amount of the deposit with interest at 5 per cent., deducting a ratable amount of the dividends received by the Crown upon the winding-up of the bank.

Sir Henry Strong, C.J., and Sedgewick, J., concurred.

Girouard and Taschereau, JJ., dissented.

HIGH COURT OF JUSTICE, ONTARIO

Re Farmers' Loan and Savings Company. Debenture Holders' Case*

The company being in liquidation under the Dominion Winding-up Act, a claim was made on behalf of holders of the company's debentures that they were entitled to a charge on the assets of the company in priority to depositors.

The company was formed on the 19th October, 1871, under C. S. U. C. c. 53, by sec. 38 of which the right of a society formed under it to borrow money, if authorized by its rules to do so, was recognized.

By rule 7 of the company, passed under the authority of sec. 2 of c. 53 C.S.U.C., the directors were authorized to borrow money for the use and on the assets of the company, to receive money on deposit, and to "loan" or invest such money either on mortgage on real estate or in any other way they might think best for the interests of the institution :—

Held, that the company was invested with the power to borrow money for its purposes, and to give security upon its assets for the payment of the money borrowed.

And this power to pledge the assets was one which might be delegated to the directors under C.S.U.C. c. 53, sec. 5.

The debentures upon which the claimants relied were headed "Land Mortgage Debenture," and contained a promise by the president and directors to pay to the person named a certain sum at a particular time and place, with interest, and were signed by the president and secretary, under whose signatures were the following words: "The payment of this debenture and the interest thereon is guaranteed by the capital and assets of the company invested in mortgages upon approved real estate in the Dominion of Canada:"—

Held, that these instruments created a charge upon the property of the company.

Per MEREDITH, C.J., that the charge was such as entitled the debenture holders to be paid out of the assets of the company in priority to the depositors and other creditors.

In the winding-up of the company under the Dominion statute R.S.C. ch. 129, before the Master in Ordinary, the holders of the company's debentures asserted a claim to priority over the depositors. The Master ruled against this claim, from

**Ontario Reports.* Reported by E. B. Brown

which ruling certain of the debenture holders appealed. The appeal was heard by a Divisional Court composed of MEREDITH, C.J., ROSE and MACMAHON, JJ., on the 9th and 10th December, 1898, and allowed.

MEREDITH, C.J. :—These appeals are by debenture holders from the ruling of the Master in Ordinary against their claim to be entitled to a charge on the assets of the company in priority to depositors.

The company was formed under the C.S.U.C. c. 53, on the 19th October, 1871, and among its rules, passed under the authority of sec. 2, is the following :—

"7. The directors are authorized to borrow money for the use and on the assets of the company, to receive money on deposit in large and small sums, and to pay such interest therefor and under such regulations as they may from time to time deem advisable, and to loan or invest such money either on mortgage on real estate or in any other way they may think best for the interests of the institution."

It has been determined by the highest authority (*Murray v. Scott*), that such a company, if authorized by its rules to do so, may borrow money for the purposes of the company, and may charge or pledge its assets for the payment of the money borrowed.

The original Building Societies Act, consolidated with the Acts amending it by the Act already referred to, was 9 Vict. c. 90, the provisions of which, as far as they affect the present enquiry, are substantially the same as those of the Imperial Act upon which the questions arose which were under consideration in *Murray v. Scott*, with the following exceptions :—

(1) The Imperial Act did not, as the Upper Canada Act does, create the members of the society a body corporate.

(2) The Upper Canada Act expressly recognizes the right of a society formed under it to borrow money, if authorized by its rules to do so, by providing in sec. 38 as follows :—

"38. Every such society by its rules, regulations and by-laws authorized to borrow money, shall not borrow, receive, take or retain, otherwise than in stock and shares in such society, from any person or persons, any greater sum than three-fourths of the amount of capital actually paid in on unadvanced shares, and invested in real securities by such society ; and the paid in and subscribed capital of the society shall be liable for the amount so borrowed, received or taken by any society."

Besides this recognition of the power of the society to pass such rules, the subsequent legislation has practically converted what were originally building societies into loan companies, and has conferred largely increased borrowing powers upon them.

It is clear, therefore, I think, that this company was invested with the power to borrow money for its purposes, and to give security upon its assets for the payment of the money borrowed, and it follows, I think, that such security might be given in the form of a mortgage or pledge of or charge on the whole or any part of the assets of the company, whether existing when the security was given or subsequently acquired, or in the nature of what is known as a "floating security" upon the assets, present and future.

That this is the result of the decision in *Murray v. Scott* is manifest, I think, because the rule which was under consideration in that case professed to give to the lenders of the money a first charge for it upon the property of the company, and that charge was held to be a valid one. If the members might create such a charge, I know of no principle of law which, even if no express power were given to do it, would prevent them from conferring on the trustees or directors the authority to create such a charge, and that they may do so is expressly provided by sec. 5.

It was argued, however, that the effect of sec. 38 is to give a statutory charge on the capital of the company to persons from whom the company borrowed money, either by receiving it on deposit or otherwise, for the money lent, and that this statutory charge has priority over any charge or security created or given by the company, and to that argument the learned Master has given effect.

I am unable to agree with this view as to the effect of sec. 38.

It may be difficult to ascertain with certainty the purpose which the Legislature had in view in enacting the provisions of sec. 38.

It may have been, as was argued by counsel for the appellants, with the intention of preventing a society from returning to its members who desired to withdraw their shares, instead of making them fixed or permanent, the amount paid in by them, to the prejudice of those who had lent money to the society, or it may have been to leave no room for doubt that it was not to the trustees but to the capital of the society, paid in and subscribed, that persons lending money to it must look for the repayment of the money lent. The fact that the members of the society are made a body corporate does not necessarily exclude the latter view, for it is to be remembered that the Act was framed substantially on the lines of the Imperial Act, which require the society to act in the name of its trustees, in whom its property was vested, and that while the members are by the Upper Canada Act created a body corporate, as I have already mentioned, the property of the society is vested in its president and treasurer (sec. 27), and by sec. 31 the president, vice-presi-

dent and directors of the society, in their private capacity, are exonerated from all responsibility in relation to the liabilities of the society.

. . . I come now to the consideration of the second and more difficult branch of the case.

The question to be determined is whether the debentures issued by the company, all of which are in the same form, create a charge on the property of the company, and if they do, what is the nature and extent of the charge created.

The instrument is headed "Land Mortgage Debenture;" it is numbered, and is stated to be issued "under the authority of an Act of the Parliament of Canada, 37 Vict., c. 50, and also under the authority of the Revised Statutes of Ontario, c. 164;" it is in form a promise by the president and directors of the company to pay to the person named as payee the sum for which the debenture is issued, at a time and place named, with interest at a named rate, payable half-yearly on presentation of the proper coupon annexed to it; it is signed by the president and secretary, and the seal of the company is affixed, and it is also, when issued in Great Britain or Scotland, countersigned by the local director there; and immediately below the signature of the president and secretary are the words following: "The payment of this debenture and the interest thereon is guaranteed by the capital and assets of the company invested in mortgages upon approved real estate in the Dominion of Canada."

The language of the instrument is open, as it appears to me, to three possible meanings:—

(1) That the capital and assets of the company are invested in mortgages upon approved real estate in the Dominion of Canada, and that this fact affords a guarantee to the holder of the debenture that the principal and interest payable according to its terms will be paid, and that in this sense the debenture is a land mortgage debenture.

(2) That the payment of the principal and interest is secured upon the capital and assets of the company, which are stated to be invested in mortgages upon approved real estate in the Dominion of Canada, the latter words being used, not as limiting the security to the moneys so invested, but as a representation by the company that the capital and assets upon which the charge is created are invested in that kind of securities.

(3) That the payment of the principal and interest is secured upon so much of the capital and assets of the company as is invested in mortgages upon approved real estate in the Dominion of Canada.

The third of these constructions suggested as possible to be put on the instrument seems to me to be the least likely to have been that which was intended by the contracting parties, and that which the language used least accords with.

It is, I think, more probable that if it was intended to create a charge, the charge was one which would embrace all the assets of the company rather than so much of them as might from time to time be invested in mortgages, and so to leave it in the power of the borrower to reduce the security of the lender as he might see fit by changing the investments from mortgages to debentures of municipal corporations or of public school corporations, or Dominion or provincial stock or securities —R.S.O. 1877, c. 164, sec. 21—or to loans on unadvanced shares —sec. 43. I can hardly imagine that a lender, having this Act referred to on the face of his debenture, would have taken the risk of his security being lessened or probably entirely destroyed by the borrower exercising his right to change the character of the investments so as to produce that result.

I have difficulty, too, if the security is to be so limited, in holding the charge to be a floating security. There are, upon such a construction, no words referring to future investments in mortgages, and I do not see how they can be implied. Where the security is upon the undertaking or upon the capital and assets, the almost necessary inference is that the assets as they may exist when the security is to be enforced are that which is to be the security. If the language does not imply that the security is to be a floating one, I have difficulty in conceiving that the company would give a security which would prevent their dealing with their securities as the necessities of their business might require, or that a lender would run the risk of his security being destroyed, or that lenders would be found when the debentures must have priority according to their respective dates of issue, and a complicated and difficult enquiry would be necessary, in case the securities were changed, or there were successive issues of debentures, to determine the security to which each debenture holder was entitled.

The words "invested . . . upon approved real estate" are also to my mind indicative rather of an intention to describe the kind of securities in which the company made the investment of its capital and assets—mortgages . . . upon approved real estate—than as descriptive of the subject matter of the security.

Being of this opinion, my choice must be between the first and second of the suggested constructions, and I have come to the conclusion that the second is the one which should be adopted.

The instrument, as has been seen, is described as a "land mortgage debenture." Had the word "land" been omitted, this description would point plainly to a well known form of security, a debenture which is both an obligation for the payment of the money which is payable by the terms of it, and a

mortgage on the property of the company by which it is issued, or some part of it, or secured by such a mortgage, and the addition of the word " land " appears to me to be indicative of the nature of the property on which the mortgage is represented to exist.

What then is the meaning fairly to be attributed to the words added at the foot of the instrument, "the payment of this debenture and the interest thereon is guaranteed by the capital and assets of the company invested in mortgages upon approved real estate in the Dominion of Canada ? "

The position which the provision occupies in the instrument is, I think, immaterial, as it forms an integral part of the debenture. The words "guaranteed by" are, or at least may be, the equivalent of the words "secured upon," and had that form of expression been used, there would be no room for doubt, I think, that the words would amount, if not to a direct charge on the capital and assets of the company, to a representation that the debentures were secured in that manner, and a contract with the payee of the debenture that he should have that security for the payment of the debenture money and interest.

It is unnecessary to refer to all of the authorities which were cited on the argument to support the proposition that such language as I have indicated will create a floating charge on the company's property. It will suffice to refer to three of them.

In *In re Panama, New Zealand, and Australian Royal Mail Co.*, the debenture was headed "mortgage debenture," and by it the company charged its "undertaking, and all sums of money arising therefrom, and all the estate, right, title, and interest of the company therein," with the repayment of the money borrowed and interest thereon, and it was held by the Court of Appeal, affirming the judgment of Vice-Chancellor Malins, that the debenture holders acquired a charge upon all the property of the company, past and future, and that they were entitled to be paid out of the property of the company in priority to the general creditors.

In *In re Florence Land and Public Works Co.—Ex. p. Moor*, the instrument, which was called an "obligation," was expressed to be made under the power of the company's articles, which gave to the directors power to borrow money by mortgage on any part of the company's property, or by bonds, debentures, or mortgage debentures, which should entitle the holders to be paid out of the moneys, property, and effects of the company *pari passu*, and by the obligation the company bound themselves, their successors and assigns, and all their estate, property, and effects, to repay the sums mentioned therein at a future date. It was held that the obligation constituted a charge on the property of the company, subject to the power of the directors to dispose of

any part of it in the ordinary course of their business; the Master of the Rolls (Sir George Jessel) came to this conclusion, reading the obligation with reference to the articles of association, but Lord Justice James was of opinion that upon the construction of the obligation itself, without reference to the articles, except as to whether the obligation was *intra vires*, there was sufficient to constitute a charge upon the property of the company, and Lord Justice Thesiger agreed in the result without expressing any opinion as to the latter point.

In *In re Colonial Trusts Corporation*, the debenture was in the form of a bond, and by it the company "obligated" for payment of the debenture and interest the real and personal estate of the company. It was held that this created a floating security covering the company's property as it stood at the moment when the business was put an end to, but did not cover the uncalled capital of the company, as that was not "property" of the company.

Had the language in question in this case been used in a prospectus and not found a place in the debenture, there would be more room for the argument that it was intended merely to convey information to those who were invited to deal with the company by lending money to it upon its debentures, as to the nature of the securities in which the company invested its capital and assets, and to the "moral" security that was thus afforded for the payment of the debentures and interest; but found as the provision is on the face of the debenture itself, it cannot, I think, be so treated, and must be taken to have been intended to be, as I have said, at least a representation by the company that the payment of the debenture and interest thereon was secured upon the capital and assets of the company, and a contract that it should be so secured.

Assuming, however, that the language of the debenture is not such as in terms to create a charge on the capital and assets of the company, the case of *In re Strand Music Hall Company (Limited)*, is an authority for my last proposition. In that case the directors of the company borrowed £5,000, under a written agreement with the lender, one of the terms of which was that two hundred mortgage bonds of £50 each, "forming part of £25,000 of mortgage bonds constituting a first charge on the property of the company," should be deposited with the lender as collateral security for the loan, which was secured by two promissory notes of £2,500 each, and it was held that, as the directors had power to charge the property of the company, and the intention to create the charge appeared from the agreement, a valid charge was created, though the mortgage bonds were invalid through incompleteness.

The principle of this decision is, I think, clearly applicable to the present case, if I am right in the view that the debenture contains a contract with the debenture holder that he shall have, as security for the payment of his debenture and interest, the capital and assets of the company.

The same principle was applied in *Town of Dundas v. Desjardins Canal Company*, to the case of a canal company which had executed a bond which did not contain direct words of charge, but stated that the receiver was "entitled to such security therefor (*i.e.*, money lent) as is mentioned in the said recited Act." The Act which authorized the borrowing provided that "all such bonds or mortgages * * shall take precedence and have priority of lien on the said canal and the tolls thereon, and other property of the company over all claims," etc., and it was held that, beyond doubt, the holders of the bonds were entitled to a charge on the canal and tolls and to the appointment of a receiver therefor.

So also in *Ross v. Army and Navy Hotel Co.*, where the debentures were issued with a condition annexed that the holders of the debenture bonds of that issue were entitled *pari passu* to the benefit of a "covering deed" to secure the payment of all moneys payable on the debenture bonds, it was held that, assuming the covering deed to be void for want of registration under the Bills of Sale Act, the intention to give the debenture holders a valid charge on the property comprised in the deed was manifest on the face of the debentures, read in conjunction with the annexed condition, and amounted to an equitable contract which would be carried into effect to give a charge upon all the property of the company; and, accordingly, that the chattels intended to be charged with the money due on the debentures were subject to an equitable charge in favour of the holders of those debentures.

I refer also upon this point to *In re New Durham Salt Co.*, Brice on Ultra Vires.

If the language of the instrument were more ambiguous than I think it is, the case is, in my opinion; one for a liberal application of the principle of taking words "*fortius contra proferentem*."

The ruling of the Master in Ordinary should, therefore, in my opinion, be reversed, and there be substituted for it a declaration that the debenture holders are entitled to be paid out of the assets of the company in priority to the depositors and other creditors. The costs of the appeal should, I think, be paid out of the moneys in the hands of the liquidator.

UNREVISED TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Year ended 30th June—	1898		1899	
Free	$51,447		$59,807	
Dutiable	73,695		87,536	
	$125,142		$147,343	
Bullion and Coin	4,389	$129,530	4,677	$152,020

EXPORTS

For the Year ended 30th June—				
Products of the mine	$13,998		$13,343	
" Fisheries	10,792		9,948	
" Forest	26,533		28,025	
Animals and their produce	44,243		46,688	
Agricultural produce	33,234		23,014	
Manufactures	10,455		11,457	
Miscellaneous	147		201	
	$139,402		$132,676	
Bullion and Coin	4,632	$144,034	4,010	$136,686

SUMMARY (in dollars)

For the Year ended June—	1898	1899
Total imports other than bullion and coin	$125,142,000	$147,343,000
Total exports other than bullion and coin	139,402,000	132,676,000
Excess	(*Exp.*) $14,260,000	(*Imp*) $14,667,000
Net imports bullion and coin	243,000	667,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of June, July and August, 1899, and comparison with August, 1898:

LIABILITIES

	30th June, 1899	31st July, 1899	31st August, 1899	31st August, 1898
Capital authorized	$76,808,664	$ 76.308,664	$ 76,808,664	$ 76,258,684
Capital paid up	63,674.085	63,390,653	63,826 333	62,407,759
Reserve Fund	28,956,908	29,114,793	29.341,697	27,555,666
Notes in circulation	$ 39,097,708	$ 40,270,100	41,446,399	$ 37,299,496
Dominion and Provincial Government deposits	7,407,996	5,834,952	6,205,731	5,748,413
Public deposits on demand	91,852,400	93,080,103	95,264 689	84,306,117
Public deposits after notice	166,549,940	168,044,220	168,627,016	149,972,984
Bank loans or deposits from other banks secured	42.000	528,016	483,333	....
Bank loans or deposits from other banks unsecured	3,529,152	3,923,984	5,004,981	3,418,628
Due other banks in Canada in daily exchanges	144,822	153,629	228,246	133 783
Due other banks in foreign countries	684 932	598,017	616,882	502,360
Due other banks in Great Britain	6,536,052	6,066,940	4,437,249	2,557,089
Other liabilities	485,392	672,004	389,400	223,523
Total liabilities	316,330,478	319.172,045	322,704,010	$284,162,483

ASSETS

Specie	$9,240,810	$ 9,114,677	$ 9,442,296	$ 9,656,747
Dominion notes	16,959,927	17,393,073	18,486,264	17,579,203
Deposits to secure note circulation	2,016,573	2,072,615	2,074,202	1,983,983
Notes and cheques of other banks	11,015,876	10,931 766	9,953,665	9,055,625
Loans to other banks secured	46,185	595,373	522,648	25,000
Deposits made with other banks	3,606,522	3,568,741	4,629,688	4,188,193
Due from other banks in Canada in daily exchanges	280,673	423,215	490,258	204,478
Due from other banks in foreign countries	21,674,085	21,672,107	28,315,269	25,553,817
Due from other banks in Great Britain	10 170,065	12,279,908	11,968,240	11,483,170
Dominion Government debentures or stock	4,898,019	4,945,892	4,946,393	4,899,211
Public, municipal and railway securities	31,107,771	34,135,229	30,244,545	35,117,485
Call loans on bonds and stocks	30,659,460	30,821,503	31,692,777	21,475,172
Current loans and discounts	250,974,389	247,747,500	247,669,051	218,077,369
Loans to Dominion and Provincial Governments	3,150,714	1,941,897	1,981,663	1,777,447
Overdue debts	2,080,089	2,160,321	2,313,145	3,127,450
Real estate	1,810,380	1,766,908	1,710,865	2,071,962
Mortgages on real estate sold	607,875	576,479	629,634	559,135
Bank premises	6,012,083	5,968,422	6,041,048	5,830,126
Other assets	2,624,712	4,481,902	4,692,283	2,019,555
Total assets	408,936,411	412,597,714	417,804,124	$374,685,325
Loans to directors or their firms	7,182,672	7,357,683	7,300,781	$7,255,148
Average amount of specie held during the month	9,308,030	9,358,261	9,416,553	9,727,955
Average Dominion notes held during the month	16,383,245	16,612,667	17,948,198	16,459,260
Greatest amount of notes in circulation during month	39,313,896	41,125,246	42,447,841	38,138,731

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

	Montreal		Toronto		Halifax		Hamilton	
	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9
	$	$	$	$	$	$	$	$
September	55,080	61,856	32,466	33,932	5,164	4,919	2,971	2,773
October ..	59,340	66,354	35,736	38,349	5,817	5,408	2,970	3,103
November	59,166	67,246	34,211	39,125	5,580	5,154	2,878	3,147
December	56,509	69,143	35,986	43.508	5,386	5,838	3,094	3,334
January ..	60,334	64,850	37,836	42,388	5,009	5,913	3,028	3,274
February .	62,332	62,432	33,414	40,818	4,446	4,583	2,663	2,807
March ...	62,043	69,610	39,012	40,646	5,285	4,838	3,021	3,122
April	50,003	61,249	33,035	39,182	4,472	5,209	2,858	3,304
May	56,475	71,777	34,374	44,349	4,798	5,602	2,932	3,513
June	59,471	63,756	36,960	41,189	4,997	5,461	3,001	3,224
July......	60,423	63,209	35,727	40,569	5,851	4,742	3,117	3,304
August ..	55,578	63,115	32,390	37,207	5,551	7,823	2,655	3,138
	696,754	784,597	421,147	481,262	62,356	65,490	35,188	38,043

	Winnipeg		St. John		Vancouver	Victoria
	1897-8	1898-9	1897-8	1898-9	1898-9	1898-9
	$	$	$	$	$	$
September	8,035	6,414	2,620	2,508		
October ..	13,291	9,347	2,498	2,498	2,518	*
November	13,550	11,553	2,660	2,660	2,838	2,663
December	9,784	10,708	2,738	2,746	3,058	2,433
January ..	6,347	7,683	2,417	2,470	2,441	2,544
February .	5,517	6,209	2,022	2,212	2,099	2,849
March ...	5,968	6,756	2,148	2,391	2,818	2,689
April	6,240	6,916	2,254	2,494	3,024	2,848
May	8,683	7,472	2,513	2,910	2,784	2,700
June	7,397	8,211	2,592	2,606	3,768	2,509
July......	6,316	8,169	2,927	2,753	3,355	3,087
August ..	6,180	7,995	2,059	3,103	4,929	3,039
	97,308	97,433	29,448	31,351	33,632	27,361

*Figures for October not furnished.

Vol. VII] [Number 2

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

JANUARY—1900

PROCEEDINGS OF THE EIGHTH ANNUAL MEETING OF THE CANADIAN BANKERS' ASSOCIATION

THE eighth annual meeting of the Association was held in the Windsor Hotel, in the City of Montreal, on Wednesday and Thursday, the 25th and 26th days of October, 1899.

The chair was taken by the President, Mr. Thomas McDougall.

The following members were present :

BANK	REPRESENTED BY
The Bank of Montreal	A. Macnider
" Bank of Toronto	D. Coulson
" Imperial Bank of Canada	D. R. Wilkie
" Ontario Bank	Wm. H. Smith
" Dominion Bank	T. G. Brough
" Bank of Ottawa	R. B. Kesson
" Quebec Bank	Thos. McDougall
" Bank of British North America	H. Stikeman
" Canadian Bank of Commerce	B. E. Walker
" Merchants Bank of Canada	Thomas Fyshe

The Union Bank of Canada - -	Geo. H. Balfour
" Merchants Bank of Halifax - -	E. L. Pease
" Traders Bank of Canada - -	G. Strathy
" Western Bank of Canada - -	T. H. McMillan
" Banque d'Hochelaga - - -	M. J. A. Prendergast
" Standard Bank of Canada - -	G. P. Reid
" Eastern Townships Bank - -	W. Farwell
" Bank of New Brunswick - -	G. Schofield
" People's Bank of Halifax - -	D. R. Clarke
" Commercial Bank of Windsor -	A. E. Lawson

The following associates were also present and registered during the various sessions: George Hague, J. H. Plummer, C. Bogart, J. A. Richardson, A. B. VanFelson, G. deC. O'Grady, D. Hughes Charles, B. Austin, F. B. McCurdy, C. White, E. A. McCurdy, F. H. Mathewson, Sir Chas. Forrest (Bart). There were also a considerable number present who neglected to register.

Z. A. Lash, Q.C., counsel for the Association, was present.

The President called the meeting to order at noon and extended a hearty welcome to the visiting members.

Mr. Farwell made reference to the events in South Africa, and in response the meeting rose and sang the national anthem with enthusiasm.

The minutes of last annual meeting, as of record in Vol. VI, No. 2, of the Journal of the Canadian Bankers' Association, were taken as read, and confirmed, on motion of Mr. Walker, seconded by Mr. Hague.

The Secretary then read the report of the Executive Council as follows:

REPORT OF THE EXECUTIVE COUNCIL

To the Members and Associates:

The Executive Council beg to report as follows concerning the work of the Association since the last annual meeting on October 26th and 27th, 1898.

Three meetings of Council have been held, in addition to the final meeting this morning.

LEGISLATION

There was legislation of interest to the Association in the Dominion Parliament and the legislatures of Quebec, Ontario and Prince Edward Island.

In the Dominion House an Act was passed as an amendment to the Bank Act, authorizing the issue of notes by Canadian Banks in other British Colonies and possessions, the total amount of the circulation issued being determined by clause 51 of the Bank Act.

During 1897 the Council then in office urged upon the Postmaster-General the desirability of so amending the Post Office Act as to permit the insurance of money parcels carried by registered mail. No action was taken in the matter by the Minister until last session, when an Act was passed amending the Post Office Act in this direction. It is with regret, however, that your Council has to announce that the amendment does not meet the requirements of the Association, as the maximum amount to be insured under the Act is twenty-five dollars.

A Usury Bill was introduced in the Dominion House but was withdrawn, it being found that it would not accomplish its object without exposing legitimate and honourable transactions to undue restraint under certain possible conditions.

In the legislature of the Province of Quebec the bill to amend and consolidate the Charter of Montreal caused your Council not a little trouble and anxiety in connection with unfair taxes which it was sought to impose upon banks doing business in the city. Your Council succeeded in having the objectionable clauses removed from the Bill.

In the legislature of Ontario a revenue Bill was introduced seriously affecting banks, in opposing which your Council was not so fortunate. In the interest of banks having their head offices in Provinces other than Ontario your Council is of opinion that an attempt should again be made to secure the modification of the Act, so as to bear less heavily upon such banks.

At the last annual meeting your Council was desired to prepare a memorial to the Governor-General in Council praying for the disallowance of the Prince Edward Island Evidence Act. The memorial was duly prepared by our solicitor and transmitted through the Hon. Minister of Justice. Your Council is pleased to state that the Province has, on its own initiative, amended the Act so as to remove the objectionable feature.

By the original Act any creditor selling goods through a commercial traveller in Prince Edward Island could not sue for payment of the debt, nor could suit be entered for payment of promissory notes or acceptances given in payment of the debt without giving proof that the commercial traveller had a license from the Province at the time the sale was made. The amendment permits the license to be taken out any time before suit is entered.

INSOLVENCY

Preparations were made during the session of the Dominion Parliament to bring forward once more the Fortin Insolvency Bill. Your Council again considered the Bill very carefully, and the affiliated sections of the Boards of Trade were enabled to come to an agreement with the Boards of Trade of Montreal and Toronto satisfactory to your Council and conserving the interests of the banks. The Bill, however, was not brought forward.

A CANADIAN MINT

It having appeared that a resolution favouring the establishment of a mint in Canada was likely to be introduced into the Dominion Parliament last session, your Council addressed a strong memorial to the Governor-General in Council opposing the proposition as both unwise and unnecessary.

BANK MONEY ORDERS

When the system of Bank Money Orders was being discussed, it was suggested by several of the members of the Association that the issuing bank should retain the entire commission. During the past year, after practical experience with the money orders, this opinion became stronger and your Council issued a circular recommending the adoption of the plan instead of the issuing and cashing banks sharing the commission equally. With the exception of three banks this recommendation was adopted, and the change seems to be working satisfactorily.

CHEQUES PAYABLE TO ORDER

In a circular issued 4th May last your Council recommended the discouragement of the practice of making cheques payable to order when the payee is not a firm or individual or corporation capable of giving an endorsement, but an abstraction such as "Bills Payable." From the replies received it is apparent that all the members of the Association are not of one mind on the question, but several have adopted the policy recommended.

BANK TROUBLES

Your Council regret to announce that La Banque Ville Marie, suspended on 25th July last, is now being liquidated under the Winding-Up Act. Your President, acting with the advice of other members of the Council and with the consent of the bank officials, appointed Messrs. F. W. Taylor of the Bank of Montreal, and W. H. Nowers of the Merchants Bank of Canada, to investigate and report upon the circulation account of the bank.

The Banque Jacques Cartier suspended on the 31st July last, but its resumption is announced for to-day.

THE BANK ACT

The Committee appointed by the Executive Council at its meeting of August 16th last to consider the renewal of the bank charters, viz: Messrs. Clouston, Walker, Thomas, Stikeman, Schofield, Wilkie, and Gillespie, will meet to organize in room 96 of the Windsor Hotel this evening at eight o'clock, and all general managers are requested to be present with a view of offering suggestions to the Committee.

INCORPORATION

With the view of extending the sphere of action of the Association it has been decided by your Council to apply for a charter of incorporation. The committee appointed to consider the Bank Act has been given charge of this matter also.

RELATIONS OF THE SUB-SECTIONS TO THE ASSOCIATION

Your Council regret to announce the formal withdrawal of the Bank of Nova Scotia from the Association on 21st September last on account of a misunderstanding between that Bank and the Winnipeg section. Your Council exerted its powers in the effort to bring about harmony, but without success.

In view of this unfortunate misunderstanding, and to prevent the possibility of its recurrence, your Council appointed the following gentlemen a committee to determine the relations between the sections and the Association, and to define the powers of the former, viz: Messrs. McDougall, Walker, and Fyshe. This Committee will meet for organization to-morrow morning at 10.30 in room 96.

BANK BURGLARY AND FORGERIES

The frequency of burglary this past year calls for discussion in regard to the best means of bank protection, either electrical or otherwise, and your Council think it might be well for the Association to offer a prize for the cheapest and best method of electrical protection.

The attention of the Council having been drawn to a defect in the law of the Province of Quebec in regard to forgeries, the matter is recommended to be taken up by the incoming Council.

It was moved by Mr. Macnider, seconded by Mr. Strathy, and unanimously carried, that the report of the Executive Council, as just read, be and is hereby accepted.

FINANCIAL STATEMENT

The Secretary-Treasurer then submitted the financial statement, duly audited, for the year ending June 30th, 1899:

GENERAL STATEMENT

Charges	$4,461 81	Balance June 30th, 1898		$ 165 67
Journal expenditure	1,287 75	Revenue from members		3,610 00
Bank interest	51 35	Revenue from associates		1,288 00
Office furniture	224 70			
		Due bank	$1,252 85	
		Less cash	290 91	961 94
	$6,025 61			$6,025 61

GROSS REVENUE ACCOUNT

Charges	$4,461 81	Balance June 30th, 1898	$ 165 67
Net Journal expenditure	1,287 75	Revenue from members	3,610 00
Bank interest	51 35	Revenue from associates	1,288 00
		Balance	737 24
	$5,800 91		$5,800 91

On motion of Mr. Macnider, seconded by Mr. Strathy, the statement was adopted.

SCRUTINEERS

Messrs. Richardson and Kesson were appointed scrutineers for the taking of votes on any question which might require a ballot.

ESSAY COMPETITION

The Secretary then read the report of the Prize Essay Committee. Their award was as follows:

SENIOR COMPETITION

First Prize.—T. G. McMaster, Canadian Bank of Commerce.

Second Prize.—A. Gordon Tait, Merchants Bank of Halifax.

JUNIOR COMPETITION

First Prize.—H. G. P. Deans, Bank of British North America.

Second Prize.—B. V. Gomery, Molsons Bank.

REPORTS OF SUB-SECTIONS

The report of the Halifax Bankers' Association was presented by Mr. McCurdy as under:

HALIFAX BANKERS' ASSOCIATION

The Halifax Bankers' Association was organized early in March of this year with President, Vice-President, Secretary-Treasurer and various committees.

The object of the society was the association of senior and junior bank officers, with the diffusion of knowledge and experience, essential to the development of efficient bank officers.

The term, as the summer months set in, was necessarily short and consisted of six fortnightly meetings.

The work of the term was:

The opening address.

A debate.

A study of "The Bank Act."

Seven papers on as many subjects of interest to a society of bankers with discussions arising from them.

A formal summing up of the work of the session.

There was a membership of thirty-five, ascertained on a footing of payment of fees. Maximum attendance 28, minimum 14.

The first meeting of the ensuing term is at the close of the present month of October, when with the election of new officers it is hoped the work of the society will not only be continued, but be carried on with greater vigor.

It is right to say that so far from sports and games being deterrents to progress, the Association found those members who were most active in these matters were also ready and earnest in study and debate.

A. Allan, President
H. W. Jubien, Secretary

The Secretary read reports of the sub-sections as follows:

BANKERS' SECTION OF THE MONTREAL BOARD OF TRADE

The Bankers' Section of the Montreal Board of Trade has much pleasure in submitting its first report since affiliation.

At the annual meeting of the Section, held on the 11th January last, it was decided to become affiliated with the Association in order to be in line with the various sections throughout the Dominion.

The Section has since received the intimation that the Association has formed a committee to determine the relations between the Association and the affiliated sections. It has felt in the past that the absence of well defined rules for the guidance of sections in their relations to the Association exposed the organizations to friction, and in framing its own by-laws, even before affiliation was anticipated, it did so in such manner that all important questions referred to the general managers were in reality referred to the Executive Council, on which it has ever had a large representation.

During the past year the Section took part with the Association in opposing the unjust tax clauses aimed against banks, as proposed in the Draft Bill for the amending and consolidation of the charter of Montreal. The first move in this matter was made through the Section, and when the Association decided to deal with the question the Section loyally supported your President and Council, and is pleased to have had a share in the success which attended these efforts.

The object of the Section is to obtain conformity of action amongst bankers in Montreal on matters pertaining to the interests of banking, particularly local matters. With this object, the Section has twice during the past year accomplished through its proper officers certain agreements regarding the rate of interest upon call loans, which in the past were wont to be brought about by individual action with consequent loss of time, much trouble and occasional annoyance. It is hoped that local bankers will avail themselves still more of the Section in many matters requiring solution, such as uniformity of warehouse receipt forms, inland and ocean shipping bills, deposits of married women and minors, endorsement by married women under the Quebec code, which is the subject of considerable courtesy, as well as other matters such as the minor profits of banking.

The Montreal Clearing House is not as yet affiliated with the Section, but its officers are practically the same, and the constitution of the Section provides for affiliation if desired. In this connection the Section is pleased to be able to report an unprecedented increase in the volume of clearings during the past few years, and confidently anticipates that the total clearings of the present year will approximate eight hundred millions of dollars, a figure that will place it on a par with last year's record of San Francisco, the eighth among the clearing house cities of America, Montreal being the ninth.

The proceedings of the Clearing House during the past two years have been remarkably free from errors on the part of the clearing banks. It has not been found necessary to call a meeting of the committee during that period.

The Section has to deplore the demise of two of the most respected members of its committee, Jeffrey Penfold, Esq., late manager of the Bank of British North America in Montreal, and Francis Kennedy, Esq., late manager of the Bank of Nova Scotia here. Both gentlemen were widely and favourably known throughout the banking community, and their absence from the Council Board of the Section is a serious loss.

The Section is delighted to welcome the Association to Montreal, and had it not been trammelled by the custom which places the preparation of

entertainments in the hands of the head offices of the Convention city, it would have testified to the sincerity of its welcome in a more practical manner.

Yours respectfully,

A. M. CROMBIE, Chairman
ARTHUR WEIR, Secretary

BANKERS' SECTION OF THE BOARD OF TRADE, TORONTO

The Bankers' Section of the Board of Trade, Toronto, beg to submit to the Canadian Bankers' Association the following report relating to the proceedings of the Section during the year:

As this is the first report which has been submitted to the Association, it may not be out of place to state that the Section was organized in March, 1886, and has since that time interested itself in all matters connected with the interests of the banks represented. Its membership is made up of all bank officers in the City of Toronto who are members of the Board of Trade, and every chartered bank doing business in the city is represented in its membership.

The Chairman for the past year was Mr. Angus Kirkland, of the Bank of Montreal, and Vice-Chairman, Mr. R. D. Gamble, of the Dominion Bank.

The most important matter dealt with by the Section was in connection with the legislation introduced by the Government of the Province of Ontario imposing taxation on banks doing business in that Province. As soon as information reached the Section that it was the intention of the Government to introduce such legislation, a Committee, consisting of Mr. Kirkland (chairman), and Messrs. Wilkie, Coulson and Walker, was appointed to meet with the Government and deal with the matter. This Committee at once waited upon the Government, but were unable at their first interview to gain any definite information as to the scope or details of the proposed tax.

When the Bill was introduced the Committee again waited upon the Government and had an interview with the Executive Council, at which they protested against the undue amount of taxes which the banks were being asked to contribute, and especially directed the attention of the members of the Government to the unfairness of the tax upon those banks that had their organization and head offices outside the Province. Upon this latter point they had a lengthened discussion with the members of the Government. The Government were not disposed at this time to make any changes in the Bill, but the Chairman of this Committee had subsequently another interview with the Provincial Treasurer specially relating to this question, and finally obtained the assurance that amendments to the Act would be made which would afford some relief, and especially to those outside banks that had few offices in the Province.

As a result of these conferences the Act was amended in some respects, although we cannot regard the legislation as being satisfactory either to the banks having their head offices in the Province, or to those whose head office organization is elsewhere.

Under an agreement, made some time prior to the year just closed, all the banks in Toronto and Toronto Junction were (and still are) paying three per cent. per annum as the maximum rate of interest on all deposits, and the system of paying interest on the minimum monthly balance in savings bank accounts was very generally in force. During the year it was thought well to make an effort to bring about an understanding on both these points which should be applicable at every bank office in Ontario. An agreement was drawn up which was signed by all the banks having head offices in

Toronto and by one bank in the Province of Quebec, but this has not been carried further. We are glad to be able to report, notwithstanding the absence of a former agreement, that most of the banks doing business in Ontario are working on the lines covered by the agreement.

At the recent annual meeting of the Section, the following officers were appointed for the ensuing year:

Chairman—Mr. R. D Gamble, Dominion Bank.

Vice-Chairman—Mr. Joseph Henderson, Bank of Toronto.

Toronto, 20th October, 1899

ANGUS KIRKLAND,
Chairman

MR. VAN FELSEN, seconded by MR. PRENDERGAST, moved the adoption of the Section reports.

PROVINCIAL TAXATION OF BANKS

MR. MCDOUGALL—You have heard the different reports read, that is, the Section reports of Toronto, Montreal, Halifax and Winnipeg, and I would like that they should be referred to the Council to take whatever action the matters referred to may call for. I do not think there is anything to have a discussion upon just now. The Toronto Section refers to the matter of taxation. I may say that the Council discussed this a little this morning, and it was decided to take no action at present.

MR. PLUMMER—I think, Mr. President, that the incoming Council should take the matter up.

MR. MCDOUGALL—It was decided at the Niagara meeting that the Toronto Section should deal with legislation in Ontario. Do you mean that this matter should be referred to the Council?

MR. PLUMMER—The Toronto Section of the Board of Trade is the agent of this Association to deal with matters of legislation in the Province of Ontario, but I think the Council should take this matter up, because it affects not so much the banks in Ontario as the banks outside the Province. They feel that they suffer most.

MR. MCDOUGALL—In reference to the clause in the report of the Section concerning legislation, my idea is that the matter be referred to the Council for whatever action they see fit.

MR. WALKER—One word more. I think it would be a pity if we disperse without some discussion on the question of Provincial taxation. It will be regrettable if we show no evidence that we feel dissatisfied at what has been done. I do not want to prolong discussion, but we should say something and put it on record to show that we think the Ontario tax unfair.

After some further discussion, it was proposed by Mr. Walker that the following gentlemen be appointed a committee

to formulate the arguments against the present system of bank taxation adopted in Ontario, viz: Messrs. Macnider, Fyshe, Stikeman, Prendergast, and McDougall.

The proposal was adopted.

BANK NOTES

Mr. McDougall—There is a subject to which I should like to call your attention in connection with the printing of bank notes. The American Bank Note Co. have shown me some notes that have been in use in Brazil, printed in light blue and violet colors, and decorated around the border with an intermixture of colors, the object being to prevent successful photography. I have specimens of these, and will have them here at the afternoon session. I notice that the colors of these bills are, in substance, those adopted in printing the notes of the Bank of France, which are said to defy photography. In connection with this it seems that the matter might be referred to the Committee of the Bank Act. I do not see why the banks should have different designs, and so varied. The national bank notes of the United States, for instance, have but one form. I am right in this statement am I not, Mr. Walker?

Mr. Walker—Yes, they are absolutely alike, but I would not like to see that system adopted here.

Mr. McDougall—I just want to bring the matter to your attention. I will have the notes up here, and you will see by some photographs of them that they could not be successfully photographed.

—

The Secretary read and laid on the table a letter from Mr. D. Cameron referring to collections through clearing houses.

—

The President referred to the absence of Mr. Wolferstan Thomas through illness, and suggested that the Association express its sympathy with the veteran banker and the hope that he would be shortly restored to health. Mr. Coulson made reference to the absence of Mr. R. D. Gamble through serious illness, and at his suggestion the name of Mr. Gamble was included with that of Mr. Thomas in the vote of sympathy.

AMENDMENTS TO THE BANK ACT

The President read a letter from Mr. Geo. Burn in connection with a proposed amendment to section 84 of the Bank Act, set forth on page 322 of Vol. I of the Journal.

The Secretary was instructed to make a note of this communication for consideration by the Committee on the Bank Act.

The President read a letter from Mr. G. H. Balfour, on behalf of the Union Bank of Canada, under date of October 13th, 1899, respecting changes desired in the Bank Act.

This was also referred to the Committee on the Bank Act.

The meeting then adjourned for luncheon, to reassemble at 2 p. m.

AFTERNOON SESSION

The PRESIDENT delivered his address, as published on a subsequent page of the JOURNAL.

MR. WALKER—I beg to move that a vote of thanks be tendered the President for his admirable address.

MR. HAGUE—I second Mr. Walker's motion that our very hearty thanks be given to Mr. Macdougall for his admirable and practical address.

Carried unanimously.

THE JOURNAL

The Secretary then read the report of the Editing Committee of the JOURNAL, as follows :

TORONTO, October 24th, 1899.

To the Members and Associates :

With the issue of July last the 6th volume of the JOURNAL was completed. It contained 475 pages, including a complete index of the entire six volumes, the preparation of which latter was rendered desirable especially in connection with the Legal and Questions columns.

The financial results will no doubt be regarded as satisfactory. The net cost of publication, after deducting the revenue from subscribers' fees and from advertising contracts, amounted to $1,287, which sum is as usual to be considered in connection with the Association's revenue from Associates' fees ($1,288).

The feature of the JOURNAL in the past year—which your Committee note with satisfaction—has been the increased use made by Associates of the column for questions and answers ; 103 questions were published in volume VI., as compared with 151 questions in all published in the preceding five volumes.

Your Committee think it well to ask authority for a net expenditure of $1,400 in the publication of the current volume.

Respectfully submitted.

J. H. PLUMMER
J. HENDERSON } Editing Committee
E. HAY

MR. PLUMMER—Mr. President, I move the adoption of that report, and I suppose it is proper to move also that the

incoming committee be empowered to expend $1,400 for the work of the JOURNAL for the ensuing year. I do not want to make any speech about the JOURNAL; I think, on the whole, it is a very satisfactory dollar's worth for the associates and subscribers, and I believe it is going to be more and more useful. I have been feeling for some time that we have had a long turn with the JOURNAL at Toronto, and whenever you wish to change the headquarters of the JOURNAL to Montreal you will find the Committee ready to lay it down.

MEMBERS—No. No.

A short discussion ensued as to the propriety of including in the JOURNAL a list of branches and agencies, but it was concluded that such an addition was not at the present time necessary.

MR. FARWELL—I move that the thanks of the Association be tendered to the Editing Committee, and that they be asked to continue their labours. I think they have performed their duties in a creditable manner, and have given us a magazine which is really very valuable. I think too much cannot be said in this particular, and I have very much pleasure in making the motion.

MR. STIKEMAN—I have great pleasure in seconding the motion. I know by experience among my own staff that they all derived, not only great pleasure, but a great deal of good in the way of education from reading it, and I think the members will join in the thanks to the Editing Committee who voluntarily spend so much time. I think it would be a mistake to crowd more work on these gentlemen by adding anything. I think they already have enough to do.

The motion was carried unanimously, and the Editing Committee were authorized to expend $1,400 on Vol. 7.

MR. PLUMMER—As I am the only member of the Editing Committee present I wish to thank you on their behalf for the resolution just passed. I may say that we owe a great deal to Mr. Lash, who has given much of his time to the work. A great deal has also depended on the work done by Mr. Brown, the sub-editor. I think that their names should not be omitted from the vote of thanks.

MR. McDOUGALL—I am adding the names of Mr. Lash and Mr. Brown to the vote of thanks.

MR. FARWELL—I think Mr. Lash should have a special vote of thanks.

Mr. Weir—With regard to the work done by Mr. Lash, I nave had enquiries from subscribers as to whether the questions and answers published from the commencement of the Journal could not be gathered into a special volume.

Mr. Lash—This has been discussed with Mr. Plummer several times and will probably be done. My work on the Journal in connection with answers to questions has been chiefly to read the answers prepared by the Committee, with which I seldom differ. Whenever I do differ from Mr. Plummer as to any answer, I generally find it necessary to consult the authorities, but it happens very seldom that there is any difference of opinion.

COMPETITION BETWEEN BANKS

Mr. D. Hughes Charles then read a paper on the subject of competition between banks, which was listened to with much interest. A cordial vote of thanks was tendered to Mr. Charles for his paper.

STOCKS AS SECURITIES

Mr. Lash read a paper on transfers of stock, which is published on another page of the Journal, in which he discussed chiefly the practice of accepting as security certificates of stock endorsed with a blank transfer and power of attorney. An interesting discussion followed the reading of the paper.

The President—I do not know what the practice is with the banks of this city, but when the decision in *Smith v. The Walkerville Malleable Iron Co.* became known many of the banks adopted the plan of having certificates taken out in the name of their manager. The manager then endorses the power of attorney on the back of the certificate.

A Member—Does not this system prevail in the United States? I am under the impression that stock certificates pass there just on the endorsation of the shareholder.

Mr. Lash—I think it is an almost universal practice in the United States to treat those certificates as negotiable, but I am not aware that the courts have ever recognized that as the law of the land. I am informed that in the New York Stock Exchange, in which so much of this kind of business is done, they treat certificates endorsed by their own members as negotiable, and that through their powers of discipline over their members there is no trouble. Their power is so great that they can practically make the law. I think there is no decision, although I have not exhaustively investigated the United States authorities.

Mr. Macnider—I think there is a decision in the Western States.

Mr. Lash—In the Western States you might find decisions, but I do not think there are any in Massachusetts or New York in favour of the practice.

A Member—The western decision Mr. Macnider speaks of supports Mr. Lash's view.

Mr. Lash—The English cases are exactly in line with the Court of Appeal in Ontario. I think if the matter was threshed out in the United States courts they would have to go that way.

A Member—I think companies issuing certificates requiring their return as a condition of transfer would be bound to insist on their return, and responsible if they should permit a transfer without the certificate being returned.

Mr. Lash—I think they may waive the condition if they like, and that they are under no responsibility to anyone if they should do so.

Mr. Walker—Millions of money are lent in New York on certificates endorsed in blank, but the holders are careful to see that the names are those of reputable members of the Stock Exchange. If presented bearing the endorsements of outside people they would usually be refused. Then the certificates are issued by great railroads and corporations who would not think of making transfers unless the certificates are returned, knowing the use that is made of them, and being interested in the maintenance of absolute good faith. Then, again, such certificates are usually issued and countersigned by a Trust Company, who are still more bound to prevent irregularities.

A Member—If the companies issue certificates in terms which imply that the shares will be forthcoming when the certificate is presented with a proper power of attorney, should they not be bound to have the shares? If not, why issue them?

Mr. Lash—The certificate shows the legal title at the time of its issue. A transfer outside of the company's books (as *e.g.* by endorsement on the certificate) creates an equitable title in the transferee. If the legal title has passed to someone else (as in the case referred to by the President) before the holder of the equitable title seeks to complete it, the company is not responsible. The law regards the condition as to the return of the certificate as merely a matter of internal regulation.

Mr. Prendergast—I am aware that the decision you quote exists. But is it not strange that the law gives two different dispositions in the same form?

Mr. Lash—It is the legal title that is involved. The endorsement gives a mere equitable right. The law cannot decide between them except on the principle that where rights conflict, the legal title must prevail.

A Member—Is it impossible to devise something by which this difficulty about certificates can be got over?

Mr. Lash—Quite possible, if the Company were willing to pass a by-law voiding transfers unless the certificates were produced. Then, unless some form were gone through to account for its not being surrendered, the transfer would not be complete without the return of the certificate. But when neither the charter nor the by-law of the Company has placed that safeguard, then the courts have held that the Company can waive that.

A Member—I would like to ask Mr. Lash whether if a judgment creditor of a registered holder of shares attached them in the hands of the Company the attachment would hold against a transfer endorsed on the certificate.

Mr. Lash—Not where the English rules of law prevail. The sheriff can seize and sell only the actual existing interest of the defendant, not what he appears to own but what he does own. He appears on the books of the Company to own these shares, but, as a matter of fact, he has transferred them by an equitable assignment to somebody else, and, therefore, he appears as trustee in the books of the Company. The sheriff may seize and sell them, but as a matter of fact, anyone buying shares under an Ontario execution takes his chance about the title. If it turn out that the debtor had previously transferred them, then the purchaser would only acquire any right the debtor might have to redeem those shares.

A Member—Supposing a case where a transfer of shares was floating around for a year, the Company pays dividends on them to the ostensible holder, and a claimant notifies them he owns those shares and claims the dividends?

Mr. Lash—If the Company has been notified, those dividends were not properly paid, but if not it is a question only between the ostensible holder and the transferee.

It was moved by Mr. D. Coulson and seconded by Mr. Reid, and resolved, that the thanks of the Association be given to Mr. Lash for his able paper, and that he be requested to permit the paper to be published in the Journal of the Association.

The meeting then adjourned.

SECOND DAY

The meeting was convened at noon.

ELECTION OF OFFICERS

On motion of Mr. Wilkie, seconded by Mr. Walker, the President was requested to cast one ballot for the election of the following officers for the ensuing year:

PRESIDENT

E. S. Clouston, General Manager Bank of Montreal

VICE-PRESIDENTS

Thos. McDougall, General Manager Quebec Bank.
Duncan Coulson, General Manager Bank of Toronto
Geo. A. Schofield, General Manager Bank of New Brunswick
Geo. Burn, General Manager Bank of Ottawa

EXECUTIVE COUNCIL

B. E. Walker, General Manager Canadian Bank of Commerce
Thos. Fyshe, Joint-General Manager Merchants Bank of Canada
D. R. Wilkie, General Manager Imperial Bank of Canada
H. Stikeman, General Manager Bank of British North America
M. J. A. Prendergast, General Manager La Banque d'Hochelaga
W. Farwell, General Manager Eastern Townships Bank
J. Turnbull, Cashier Bank of Hamilton
H. S. Strathy, General Manager Traders Bank of Canada
G. Gillespie, Superintendent and Inspector of Branches Bank of British Columbia
R. D. Gamble, General Manager Dominion Bank
E. E. Webb, General Manager Union Bank of Canada
T. Bienvenu, General Manager Banque Jacques Cartier
G. P. Reid, General Manager Standard Bank of Canada
E. L. Pease, General Manager Merchants Bank of Halifax
C. McGill, General Manager Ontario Bank

EDITING COMMITTEE

J. H. Plummer, Ass't Gen'l Manager Canadian Bank of Commerce
J. Henderson, Inspector Bank of Toronto
E. Hay, Inspector Imperial Bank of Canada

BANK MONEY ORDERS

Mr. Charles again brought up the question of bank money orders, urging strongly that the banks should meet the rates given by the express companies for the smaller amounts. In this he was supported by Mr. O'Grady, and after a lengthy discussion

It was moved by Mr. O'Grady and seconded by Mr. Charles that the Executive Council be requested to consider the advisability of reducing the rates charged for bank money orders, in order to conform more closely to the express money orders. Carried.

REDEMPTION OF CIRCULATION

Mr. O'Grady—Just one word before proceeding to other business. Can you give me an answer to this question of circulation, respecting the propriety of our being burdened with express charges for the transfer of circulation paid out at points where the issuing bank has not an office? We are not much troubled that way at present, but when the circulation begins to go down we will feel it.

Mr. McDougall—I think the law provides for the redemption of circulation at certain points. You may call it unnatural, but it is confirmed by the Government. It costs you as you know, but you have to put the thick with the thin.

Mr. O'Grady—If I circulate a note at my office I must redeem it at my office.

Mr. Coulson—A bank might be asked to redeem the notes of another bank issued by it, but the law would have to be changed.

Mr. Hague—What would a bank do that was paying out notes of another bank?

Mr. O'Grady—Simply redeem them.

Mr. Coulson—I think they should act as a redeeming agent. But it might mean that every bank would have to make an arrangement with every other bank and with its agencies.

Mr. O'Grady—I think not. It would involve your making arrangements with a bank at Woodstock, for instance, to redeem your circulation, if the branch there was issuing it, but only while they are issuing it. I only object to a customer presenting a cheque in a bank and being handed out a bundle of notes whose redemption is refused when they are brought back to that bank.

Mr. White—In our town one of the banks is now circulating the notes of another bank and they tell us they will redeem them at par.

Mr. O'Grady—I think it is a very reasonable arrangement. We cannot object to their circulation, but during the time in which they are being paid out, the bank paying them out should redeem them, otherwise the remaining banks are at a disadvantage.

Mr. Strathy—I do not see why they should not redeem the notes as long as they continue to issue them.

Mr. Walker—It seems to be a question of etiquette. It may not be possible to make a regulation, but I think this Association might give an expression of opinion that when a bank pays the bills of another bank regularly across its counter, the bank paying them out ought to redeem them. We cannot get at it in a legal way, but I think we might agree that it is unfair.

Mr. McDougall—This expression of opinion is accepted by the Association.

PROTECTION FROM BURGLARY

Sir Charles Forrest introduced the subject of protection from burglary, advocating the formation of a fund for the following up of burglars, and after a full discussion

It was moved by Sir Charles Forrest, that the Executive Council of the Canadian Bankers' Association be asked to take into consideration the proposal for a special fund for the following up of persons supposed to be interested in bank burglaries. Also that the Executive Council keep in touch with the American Bank Burglary Association in regard to the same question.

The motion was seconded by Mr. Kesson and carried unanimously.

RESOLUTION OF THANKS TO THE PRESIDENT

Mr. Wilkie—Mr. Macdougall has had a particularly anxious year as President, and I beg to move a vote of thanks to him for the admirable manner in which he has conducted the affairs of the Association during the past year.

Mr. Hague—I second this motion with very great pleasure. The duties of the President are very onerous, far more so than they were some years ago, and in Montreal it has been a particularly trying year. I am sure we are all very much obliged to Mr. McDougall.

Mr. McDougall—I am very grateful for your kind words. I have had a busy year, but it has done me much good. It has given me a great deal of experience which is always useful, and if the Association has benefited I am only too glad.

The meeting then adjourned.

ADDRESS OF THE PRESIDENT OF THE CANADIAN BANKERS' ASSOCIATION

DELIVERED AT THE EIGHTH ANNUAL MEETING OF THE ASSOCIATION

ON this, the eighth Annual Meeting of the Association, it is my great privilege to address you as I am about to relinquish the duties of office into other and better hands.

In giving you an account of my stewardship for the past year, I am sensible of many things but half accomplished, yet in the light of some things done, I hope to leave the impression upon your minds that I have not been altogether unprofitable to the Association.

The events of this year lead me to speak of the intention and scope of the Association. The idea of forming it was first suggested by the circumstances attending the last renewal of the Bank Act. It was then seen that the work of revising an Act which regulates the powers of all the banks in the Dominion should not be left to be undertaken at a few hurried meetings held during the Session of Parliament when the changes are to be made; but that this work should be taken up beforehand in a systematic manner by such an organization as we now have. It was felt besides, that there are other matters of legislation affecting banks which are continually cropping up, and which require more vigilant and careful treatment than they formerly received. The promoters of this Association were amply justified as to the need of it for legislative purposes alone even by what happened this year.

At the last session of the Quebec Legislature, the city of Montreal endeavored to impose a tax on the capital or the dividends of banks doing business in the city. This formidable attempt was successfully resisted, but not without a vigorous struggle on the part of the Association. The Province of Ontario, at its last session of Parliament, following the example

of the Province of Quebec, imposed a tax upon the capital of Banks, but in so doing it paid less regard to justice than this Province. It has adopted a plan the principle of which is not reasonable and the effect of which is unduly severe upon banks having their head offices outside of the Province. The discriminating nature of this law was, at the time, pointed out by the Association to the Government, but its representations did not avail to the extent expected.

One important advantage, however, is obtained through this Act, namely that it puts a limit upon municipalities in Ontario regarding the taxation of banks.

Along with the main intention of the Association, it was justly supposed that the habit of meeting together for discussion would lead to agreements to mitigate competition, or at any rate to regulate it where it is wasteful. A happy result of this kind is the arrangement to pay a uniform rate on savings deposits. This arrangement has worked along very smoothly for about four years, but in spite of the fact that it is plainly advantageous to the banks, and in spite of the circumstance that its continuance has been made possible by the efforts of the Association, there is yet a feeling among members that the Association has fallen short of the hopes entertained concerning it, because it has not done more in conciliating the rivalries of banks for business. It is true that the competition between Banks, at present, has become very keen, and it has taken on a new phase owing to the policy of bank extension which obtains at present whereby branches are opened not only in new territory, but upon ground the financial needs of which had not been previously neglected.

The movement towards bank extension like all things earthly will "have its day and cease to be;" it will bring its own banking problems along with it, one of which is the system of divided accounts—an artificial arrangement in banking which can be effectively met only by that spirit of affinity and mutual forbearance among banks which this Association is intended to foster.

The trade situation of the Dominion as shown by the recent official returns at Ottawa, gives signs all around of vigorous growth and prosperity. The Customs receipts at the port

of Montreal for nine months past indicate a continuous enlargement of imports as compared with the corresponding period last year. As illustrating the activity in trade, the bank clearings in Montreal, month by month this summer exhibit larger totals than they have done at any time since the establishment of the Clearing House.

In regard to exports—the published returns for July and August show a marked increase in the shipments of farm produce.

The lumber trade has at length thrown off its languor of several years' standing and it would appear to have recouped itself at a bound. Prices for timber and deals for the English market are said to have been satisfactory this season. A large advance in price has obtained for low grades of lumber shipped to the United States. The accumulation of small stuff which had been blackening in the mill yards for some time has been cleared out and the American competition for merchantable common lumber has whipped up its price about $3.00 per 1000 feet. Those on this side of the line who have been steadily growling for years past at the high duty imposed upon inferior lumber going into the United States, seem suddenly to have subsided into silence; and this is probably because they are certain, that so far as this season's trade is concerned at any rate, they are not paying the duty.

The dairy interest in Ontario and Quebec shows handsome returns to the farmer, and there is this flattering feature about it—that in the competition between the Colonies of the Empire, each for a share of England's needs, Canada is forging ahead of the others. The Province of Manitoba would appear to have saved the largest wheat crop which it has ever had, and the price thereof at points of delivery is better than usual. So that if we take the agricultural position as it appears in these three Provinces, it may be said that Abundance, from her golden horn, has scattered her treasures throughout them with a pretty even hand.

AN INSOLVENCY ACT

Repeated reference is made in the English papers to the anomalous state of our laws regarding insolvent estates, and the

desire is expressed by English merchants, having to do with this country, that we should have one Federal Act applicable to all parts of the Dominion, instead of having half a dozen Provincial Acts for the distribution of assets as now.

The same desire for the reform of the bankruptcy Act exists among the merchants in Canada, and representations to that effect have been made in Parliament through the Boards of Trade in the larger cities for several years past.

The reasonableness of these requests is only too apparent, and it is surprising that the Government at Ottawa should continue to treat the matter with such indifference as it has done during two sessions of Parliament past; at the session of 1898, Mr. Fortin's bill was thrown out on a frivolous pretext, and last year, when it was again introduced, it did not meet with any countenance or support from Government, for the alleged reason that the Provincial Acts are satisfactory. Now these Acts provide each a different mode of procedure so that a merchant at a distance having debtors in trouble in several Provinces has to study several Acts, and besides that he has to employ a lawyer in each Province to interpret each local Act.

There is this defect also about these Acts that they do not provide for the settlement of estates by way of composition and discharge. Inasmuch as about half the failures at any rate are settled by composition, would it not be better to recognize the fact by legislation, and regulate it? It is to the knowledge of every one concerned in failures that the large creditor enters into the deed of composition but the small one does not, and he generally succeeds in getting paid in full. The question of composition and discharge is a difficult one, but it appears to have been fairly solved by the English Act of 1883 and 1890.

That Act provides for a preliminary examination of the debtor to determine in the first place whether he has been honest or not. In cases of misfortune or unforeseen loss, fully accounted for, and when the debtor can secure $\frac{5}{8}$ of his debt, a composition is permitted, and a discharge without compromise is allowed when the estate of an honest insolvent has realized half his debt; but when wrong doing is apparent, or reckless vagance in living, or speculation at the expense of credit-

ors, even they are not allowed to give a discharge with simple reference to what the debtor may be able to pay for it. The State steps in as the guardian of trade morals to decide how the fraudulent or the incompetent trader shall be dealt with.

THE BANK ACT

The Bank Act of 1891 provides that the charters of the several banks to which it applies are continued in force until the 1st July, 1901. It is probable that at the next session of Parliament this Act will come up for consideration in order that these charters may be extended for another term. The term of ten years as provided for in this Act, is in accordance with what was done at previous renewals of the first general Banking Act of 1871.

Before that time, the duration of bank charters was variable, being in some cases ten years, and in others as much as twenty-five. It seems desirable at this renewal, and after a third revision of the Act, to extend the charters for a longer period, namely, for twenty or thirty years.

At the last revision of the Act, the most important addition made thereto was the creation of a fund in the hands of the Minister of Finance for the redemption of the note issues of insolvent banks. Circulation had previously been made a first charge on assets, and this amendment was intended to save the bill holder from delays of liquidation; and in order to fully insure that the bill holder should receive par after the suspension of a bank, the note was made to bear interest at 6%. The effect of this latter proviso has been such that in the four suspensions that have occurred since the fund was established, it has not been applied to.

THE BANK FAILURES

On the 26th July, La Banque Ville Marie closed its doors, and it has since gone into liquidation under the Winding-up Act. Irregularities of management have been revealed to the public in connection with the prosecution of the directors now going on, and it is not necessary therefore, that I should particularly refer to them. The penalties for wrong-doing in this respect

are under the Act made very severe, and the prosecution now on foot will in time show how far they are effective. The failure of this Bank has caused suffering and inconvenience to a large number of people, who will no doubt demand remedies from Parliament at its next session, calculated to prevent the recurrence of a calamity of this kind. I shall not forestall this discussion, or venture to express an opinion as to any remedies to be provided; I know that a committee of this Association exists whose special care it is to collect opinions from bankers and others as to the amelioration of our banking law, and I have no doubt that when this law is up before Parliament for discussion, that committee will be prepared with suggestions expressing a consensus of opinion among bankers as to the manner in which the evils of mismanagement in this case may, if possible, be obviated.

On the 31st of the same month La Banque Jacques Cartier also suspended payment. It is pleasing to note, however, that it is in position to resume operations as by notice to the banks given to-day.

For a month past the financial world has been perplexed and made nervous by the disturbances in the Transvaal, which have culminated in a declaration of war. It is not for us now to say what might have been done to avoid the dire resort to arms. The nation, of which this country forms a part, is committed to the contest, and it is well that we in Canada should lend her a willing hand, in order that, by a clear demonstration of unity and strength throughout the Empire, the horrors of bloodshed, of which this century has been so full, may be as little added to as possible.

THE LATE R. D. GAMBLE

SINCE our last issue there has passed away from us one of the youngest chief executive officers in Canada, Raynald D'Arcy Gamble, the late General Manager of the Dominion Bank, who died at sea homeward bound on board the "Oceanic," on Sunday, the 5th day of November.

Mr. Gamble was born in Toronto on 12th May, 1853, and was the son of Clarke Gamble, Q.C., an eminent and highly esteemed barrister, who at the great age of ninety-one years still lives to mourn the loss of his much loved son. Mr. Gamble was educated at Upper Canada College, Toronto, and Hellmuth College, London, and entered the Dominion Bank in February, 1871. He passed through the training usual in our Canadian banks, filling the various junior positions, and in this way securing a thorough knowledge of the different departments of the bank's work. In 1878 he was appointed manager at Brampton; in 1884, manager at Napanee; in 1885, inspector; and manager of the Toronto Office in 1890.

During these years the bank was under the singularly successful management of the late Mr. Bethune, and Mr. Gamble was very closely associated with him and had an intimate knowledge of the policy and motives which were influential in the direction of the bank. When Mr. Bethune died in April, 1895, Mr. Gamble was looked to as his natural successor, and was duly appointed General Manager. The results of his management have amply justified his appointment. The bank has grown in resources and largely extended its business under his administration, having, amongst other branches, established those in the important centres of Montreal and Winnipeg. Mr. Gamble formed his judgments carefully, and his opinions once

formed were firmly held. His mind was well balanced and his judgments usually sound, and he had a singularly even tempered and sunny manner that brightened his most important business relations with his customers and with his fellow-bankers. He was a member of the Executive Council of the Canadian Bankers' Association, and had filled the position of Chairman of the Toronto Clearing House, and was, at the time of his death, Chairman of the Bankers' Section of the Toronto Board of Trade. The Section attended his funeral in a body, and joined in paying this last tribute to the memory of one who was highly esteemed by all and beloved by those who had more intimate relations with him.

COMPANIES' STOCKS AS SECURITIES

As banks lend so largely upon stocks of incorporated companies, some explanations as to the legal questions involved in the acquisition of these securities may be useful. What I have to say is with reference to the law of Ontario.

It is not essential that a person should receive from the company a stock certificate in order to constitute him a holder of shares, but for practical banking purposes such a certificate is necessary. Indeed so common have they become that many persons, if not the majority, regard them not only as essential, but as constituting the very shares themselves. This is an erroneous idea, and in order that the true legal position may be appreciated and the reasons for the existing law, as subsequently stated, understood, I will here explain the nature of a share in the capital stock of a corporation and the effect of a stock certificate.

By special act of Parliament or by Royal Charter, or by some other legal and authorized mode, a new creation, having an existence in the eye of the law, capable of suing and being sued, of contracting and being contracted with, springs into being, and has an entity and identity of its own, separate and distinct from that of any other. This new being is called a body corporate as distinguished from a body natural, and is composed, not of flesh and bones and blood, but of whatever the creating power thinks fit. Its structure may be made up of a number of other bodies corporate, or it may be of one or more bodies natural.

A corporation constituted of one individual only is called a corporation sole. Her Majesty the Queen is an illustrious example of this. A corporation constituted of more than one individual is called a corporation aggregate. It is of the latter this paper will speak.

A corporation aggregate may be constituted in such manner that the individuals of which it is constituted are members having a status and rights as such, but having no right to trans-

fer the membership to another. Or it may be so constituted that each member has the right to transfer his membership. If the objects of the corporation be for the purposes of trade or gain it is essential to its smooth and successful working that the membership should be transferable, and to enable this to be readily and easily accomplished the system of shares was invented. At first the fund with which the corporation commenced business was contributed by the various members in varying proportions; this common fund was called the "stock," and the members were interested in it in proportion to their contributions. The expedient of fixing the number of shares instead of the number of members, and of placing upon each share a stated money value soon followed, till now we have in all our modern trading and business corporations an artificial creation within the corporation itself called the capital stock, limited to a stated aggregate sum and divided into shares of a stated sum each—the holder of one share or more is a member or shareholder of the corporate body, and (subject to certain limitations in special cases which it is not necessary to refer to here) he can at any time transfer one or more of his shares to another or others.

This right of membership, this holding or ownership of shares, or whatever it may be called, is a species of property of an incorporeal nature. It exists in no tangible shape, but is the creation of the law, and is a right which the courts will recognize and give effect to if it be proven by proper and sufficient evidence to exist. Therefore the right itself, and the evidence of it must not be confounded. The evidence of the right may be given in different ways, but the most common and satisfactory evidence is a certificate under the seal of the corporation itself, stating that the person named in it is the holder of shares in its capital stock.

Such a certificate is usually in some such form as the following:—

"This is to certify that A B is the holder of shares
"of $ each in the capital stock of the Company,
"fully paid, (or on each of which the sum of $ has been
"paid) and transferable on the books of the company (in person
"or by attorney), on surrender of this certificate."

On the back is usually printed a form of assignment and appointment of attorney to transfer, in some such form as the following :—

"For value received I hereby sell and transfer to
"of   shares of the within capital stock, and I hereby
"appoint   of   my attorney to transfer said
"shares on the books of the company."

Sometimes the certificate omits all mention of the amount paid on the shares, and sometimes no mention is made of the surrender of the certificate on transfer of the shares.

The courts have held that as between the company and a person who, in good faith and in reliance upon the statement in the certificate that the shares are fully or partially paid, acquires the shares, the company and its liquidator are estopped from disputing the statement and cannot even though the statement be erroneous make the holder liable upon the shares for more than, upon the face of the certificate, he appears to be liable for ; but if no statement of the amount paid on the shares appears on the certificate there is no estoppel, and the person taking the shares would be liable for whatever amount as a matter of fact was unpaid upon them.

This estoppel only arises if the person acquiring the shares has no knowledge of the true position and relies in good faith upon the statement in the certificate held by the person from whom the shares are acquired.

The Courts have also held that the company is, as between itself and the person acquiring the shares estopped by the statement in the certificate that the person mentioned in it was on the date named the holder of the shares, and if through error or fraud it turns out that the statement in the certificate is erroneous the company must nevertheless make it good or pay damages to the extent of the value of the shares.

You will therefore see how necessary it is, before advancing upon the security of shares, that the stock certificate be produced, and that it state not only the number of shares held, but also the amount paid upon each share.

Assume that an advance is applied for on the security of shares and that the stock certificate in the form I have given is produced, and that the shares are stated to be fully paid ; assume

also that the applicant has signed the proper pledge, or hypothecation agreement. What should be done so as to make the bank's control over the shares effective and secure?

I have heard the question asked—"What more do you "want than the stock certificate with the form on the back "signed? You can fill up the blanks at any time and go to the "company and make the transfer on the books, and in the "meantime no transfer can be made to anyone else, as the "certificate says 'transferable only on the books of the company "on surrender of this certificate,' and I'll take good care that "no one gets this certificate to surrender unless I want him to."

This is what the plaintiff in the case of *Smith v. The Walkerville Malleable Iron Co.* (Vol. III of the JOURNAL, p. 318) thought, but the Court, unfortunately for him, thought otherwise. In that case White held a certificate for 22 shares in the defendant company, containing the words, "transferable only "on the books of the company on surrender of this certificate," and containing on the back the form of transfer and appointment of attorney to transfer above given. Smith acquired the 22 shares in good faith. White filled in and signed the form on the back and handed the certificate to Smith, who put it in his safe, thinking he could take his time about transferring on the company's books.

White had, however, previously sold the twenty-two shares to Hunter, and had appointed an attorney to make the transfer on the books. This transfer the company allowed to be made without production or surrender of any certificate, and when Smith went to make his transfer he was told that White had no shares left. Smith then sued to compel the company to permit the transfer or pay him the value of the shares.

There was no evidence that the company acted in collusion with White, or knew anything of the transfer by him to Smith. The Court of Appeal dismissed the action.

OSLER, J., in his judgment in the case, said: "Share certificates are not negotiable instruments, nor do they purport to be so, passing the title to the shares by their mere delivery. The certificate issued by the company stated that White was entitled to 22 shares, transferable only on the books of the company (as the statute provides) and adding, 'in person, or by

attorney, on the surrender of the certificate.' The latter provision is not required, either by statute or by the by-laws of the company (which we called for) and it has been held in more than one case that the stipulation is one which the company may waive, if satisfied, or otherwise, of the right of the transferee to be registered. In other words, the title of the transferee, or rather his right to have his transfer registered or entered, and thus to have his legal title, does not depend in the case of shares of the character of those we are now dealing with, upon his possession of the share certificate. On the face of the plaintiff's certificate there is no other representation than that White was then the holder of the number of shares mentioned therein. There is no warranty that his title would continue, or representation that the holder for the time being would, by merely having it in his possession, become entitled to the shares. The certificate purports to show the legal and not the equitable title, and if persons are content to deal on the faith of the certificate with the registered holder, without inquiring into the beneficial ownership, and without obtaining a legal title by transfer, they may find themselves ousted by an earlier equitable title. Everything stated in the certificate was true when it was issued, so that, as said by the Court of Appeal *In Re Ottos Kopje Diamond Mines*, the plaintiff's cause of action must be looked for outside the certificate, and upon the assumption that the company cannot dispute the facts stated therein. In what respect then has the company failed in its duty to the plaintiff, if the whole of White's stock had been transferred in their books at the time when the plaintiff produced his power of attorney, and required it to be acted upon? If the transfer to Hunter—earlier than the plaintiff's transfer—could be shown to be invalid, the plaintiff would have made one step in the direction of proving his case, but if Hunter's right did not depend upon the possession or surrender of the certificate, afterwards transferred to the plaintiff, or of any certificate (and the shares themselves not being numbered, the assignment of them was not connected with any certificate otherwise than by being endorsed thereon), I cannot see how his title can be successfully impeached. Twenty shares, generally, were assigned to him, and were duly transferred without fraud on his part, into his name on the books of the company. When the plaintiff took his assignment and power of attorney on the 3rd April, 1893, the whole of White's shares were still at his credit on the company's books, and the shares assigned to him might, had he so desired, have been duly transferred to him, and his title thereto perfected under the 52nd section of the Act. By his own laches he enabled the holders of the other assignment to register before

him, so that when he came forward the whole of White's holding had been exhausted, the legal title having passed into the hands of other *bonâ fide* purchasers.

"If no title as between the parties can be made so as to entitle a transferee to register except upon production of a certificate, then plaintiff ought to recover, because if that were the case the transfer to Hunter should not have been made on the books, but if that, as I think, be not the case, he would fail because Hunter's transfer was lawfully entered in the register, and the plaintiff did not acquire this certificate and agreement until after Hunter's right to have it so entered was acquired."

MACLENNAN, J., said: "The certificate contains these words: 'Transferable only on the books of the company in person or by attorney on the surrender of this certificate.' The plaintiff's contention is that no transfer of these shares could be validly made without surrender of the certificate, and that the transfer to Ellis was invalid to the extent of 22 shares, because White had not the certificate to produce, and did not produce it, for surrender, when that transfer was made, and the question is what is the meaning and legal effect of the stipulation in the certificate above quoted." (The learned Judge here quoted from the Companies Act, under which the company had received its charter.)

"I think it clearly follows from these enactments, and from the terms of the stipulation in the certificate, that when on the 3rd of April, 1893, White executed the assignment of twenty-two shares to the plaintiff, on the back of his certificate, the plaintiff did not thereby become a shareholder; he merely acquired a right to go to the company's office, and to have a proper transfer made on the company's books, but the certificate itself distinctly notified him that no valid assignment could be made elsewhere than in the company's books.

"It is not alleged that the company had any notice of the plaintiff's claim, and no enquiry appears to have been made for the certificate. Was the company bound to refuse, or could they lawfully refuse, to transfer without the production of it? It is not necessary to decide that they could lawfully refuse, but I think it is clear they were not bound to refuse. The shares were standing in White's name. There had been no transfer made on the books; there could be no valid transfer made elsewhere; a transfer on the back of the certificate could be no better than if made by a separate document; the certificate itself could be of no value to anyone else. It was not negotiable, and I confess I see no obligation, nor any good reason why the company should think it necessary to insist on its production. I think *Williams v. The Colonial Bank* is a decision in favour of the defendants, and the other cases cited do not

help the plaintiff, for they were cases of estoppel, and only went to hold companies bound by their certificates, even when they were not true. Here the certificate was true, and the plaintiff might have had his shares if he had applied in due time, and might have had a transfer made on the company's books. The company have done him no wrong, and his only redress must be sought against White, who has defrauded him."

It is quite conceivable that under a company's charter or by-laws special provisions might exist which would make it necessary to the completion of a transfer on the books that the stock certificate should be surrendered or accounted for; but the company in the case quoted was incorporated under the Ontario Joint Stock Companies' Act, and the provisions of that Act, and of most other general and special Acts relating to the incorporation of companies are, with respect to the transfer of shares, similar.

It would therefore be safe to assume that the decision in the Walkerville company's case would be applicable to most other companies doing business in Canada, and as the general principles involved are in accordance with the laws of England, the decision would probably be followed by the courts of all the provinces except Quebec. I except Quebec, not because I think the law there is different with respect to this question, but because I am not sufficiently familiar with it to warrant me in saying that it is the same.

Some companies, like banks, have the right under their charters to refuse to allow a transfer of stock by a shareholder who is indebted to the company, and it may some day be held that companies whose charters do not expressly confer this right may properly assume it by by-law. In making an advance on the security of shares before transfer on the company's books there is the additional danger that the company itself may refuse to allow the transfer until an indebtedness of the shareholder has been discharged. Theoretically the risks above referred to are serious, and they may prove so in isolated cases now and then, but practically they are not so serious as they appear to be, for the majority of men holding shares in companies and having bank accounts would not be guilty of the fraud involved in White's conduct in the case mentioned, even

if they could find a purchaser of their shares without producing the certificate, and if they could induce the company to allow the transfer without surrender of the certificate. As a rule the company will refuse to allow the transfer when the certificate states that it must be surrendered, and as a rule a purchaser of shares or a lender upon their security will not pay the purchase money or make the advance unless the certificate is produced or the shares are actually transferred.

Many companies instead of attending to the transfer and registration of their own stock in their own offices, entrust this duty to an independent trust company, and require their stock certificates to be countersigned by such trust company before being valid. This tends to greater regularity and accuracy, and minimizes the risk of a transfer being made without production of the stock certificate.

I will in a few minutes point out some additional risks connected with the transfer on the back of the stock certificate, but I do not wish to be understood as implying that the risks I have mentioned and those to be mentioned, make it practically unsafe, as a rule, to make advances upon the security of stocks prior to the actual transfer on the books. On the contrary a very large and practically a very safe business has been done in this way, and it is greatly to the advantage of an important and progressive part of the commercial community, that no unnecessary difficulties should be thrown in the way of such business.

By pointing out the risks and the ways of avoiding them as far as possible this paper may be the means of facilitating rather than of interrupting *bona fide* and desirable transactions of the kind in question.

If care be taken to make advances to none but well-known and reliable customers when the stock is not at the same time actually transferred on the books, and if the stock certificate contains the statement that it must be surrendered when transfer on the books is made, and if as soon as practicable after making the advance the transfer on the books be made, the bank will in the majority of instances practically run little risk, and if a Trust company be the stock transfer agent the risk is still further minimized.

The question of the shareholder's indebtedness to the company and the risk of refusal to transfer on account thereof should be borne in mind.

Our banks as a rule, and many other companies issue their stock certificates merely as a receipt or piece of evidence that on a certain day the person mentioned in it held so many shares. They do not require production or surrender of the certificate when the shareholder in person or by attorney desires to transfer the shares on the books, and the certificate itself con tains no statement as to its surrender.

There are some points connected with the transfer and appointment of attorney on the back of the certificate which need explanation.

In form it is a transfer of the shares, but as a rule it amounts only to a transfer between the parties, and does not as against the company constitute the transferee a shareholder, still, being good as between the parties it gives to the transferee an equitable title to the shares.

By our law, sale under an execution in the sheriff's hands passes to the purchaser the right, title and interest only which the execution debtor owns. Therefore our courts have held that a sale, under execution, of shares standing on the books of the company in the defendant's name does not pass to the purchaser a good title as against a person to whom the defendant has, previous to the execution, made an equitable transfer of the shares, good as between the parties, but not completed by transfer on the books. This would, I believe, be different in Quebec; the effect of a sale under execution there being very different from the effect in Ontario. It is a well known rule that where the equities are equal the legal title will prevail, and that he who is first in time is in the strongest legal position; the importance, therefore, of having the equitable title turned into a legal title as soon as practicable, by a transfer on the books of the company, is apparent, and when an advance has been made upon the security of stock before the actual transfer upon the books, a safe rule to follow is to have the transfer made without delay and a new certificate issued in the name of the bank, or of some of its officers in trust. The appointment of an attorney to make transfer on the company's books would, if value were given for

the shares, probably be irrevocable by the appointor; but if not acted on in his lifetime it would as a mere power of attorney be revoked or ended by notice of his death. We have a statute in Ontario which enacts that where a power of attorney provides that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual to all intents and purposes according to the tenor and effect thereof, and in such case the power may be exercised in the name of the executors or administrators of the person granting it. Very few, if any, powers to transfer shares, endorsed on the stock certificate, make any such provision.

A very common practice is for the person named in the certificate to sign the transfer on the back in blank, leaving the blanks to be filled up by anyone who desires to make a formal transfer on the books. Meantime the certificate is passed from hand to hand as if it were a negotiable instrument transferable by delivery. In many cases, probably in most, this turns out all right, but under our law, as the certificate is not a negotiable instrument, this practice is open to serious objections. For instance, if the person applying for the advance be not the person named in the certificate, there is no telling how many hands it may have passed through, and in addition to the risk of forgery or other complications respecting the signature, there are risks with respect to the ownership of the shares themselves and with respect to the right of some intermediate holder of the certificate to deal with it or with the shares mentioned in it. The instrument not being negotiable the bank would take only such title as its customer had, and if a contest with some other claimant of the shares arose before the bank's title was completed by transfer on the books, the rule just mentioned, that the equities being equal he who is first in time is in the strongest legal position, might prove fatal, unless under all the circumstances the court could properly hold that the party claiming the shares was estopped from setting up his claim. Again, the charter or by-law of some companies, or the form on the back of the certificate, requires a seal to the power of attorney. Now, if a document under seal be signed and delivered in blank, it requires to be re-delivered after the blanks are filled in, otherwise it does not

become effectual. This objection was held fatal in a case which was decided in England, not very long ago, and in which the precise question arose.

With reference to the question of estoppel just referred to, the case of *Smith v. Rogers** is instructive and goes a long way to lessen the risks to which I have been alluding. The plaintiff in that case had signed the blank transfer and power of attorney on the back of the certificate and given it to a broker with instructions to sell the stock. The broker in fraud of the plaintiff procured from the Molson's Bank an advance upon the security of the shares as if they were his own, and handed to the bank the certificate endorsed as mentioned.

Evidence was given of the custom under which these certificates so endorsed are dealt with and the shares transferred on the books after the blanks have been filled in. The plaintiff having discovered her broker's fraud, sued the bank to get back the certificates, but the court held that she could not recover, not because the stock certificate was a negotiable instrument, "but upon the equitable principle that where a person confers upon another all the *indicia* of ownership of property, with comprehensive and apparently unlimited powers in reference thereto, he is estopped to assert title as against a third person, who, acting in good faith, acquires it for value from the apparent owner."

To sum up—

1. The stock certificate is not a negotiable instrument. It is not the stock itself, but is merely evidence.

2. As against an innocent purchaser or pledgee of the shares mentioned in the certificate, who made his purchase or advance in reliance upon it, the company is estopped from denying the truth of the statements in the certificate, respecting the number of shares and the amounts paid thereon.

3. The company may, notwithstanding the statement in the certificate, allow transfer of the shares without surrender of the certificate.

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*Reported in this issue of the JOURNAL.

4. The transfer endorsed on the certificate is good as between the parties, but gives to the transferee an equitable title only.

5. The transfer endorsed should be filled up when signed. There are too many risks involved when a transfer signed in blank is accepted.

6. If an advance be made before actual transfer on the books, such transfer should be completed as soon as practicable afterwards.

7. Bear in mind the question as to the shareholder's indebtedness to the company and the risk of refusal on that account to allow transfer to be made.

October 25th, 1899 Z. A. Lash

A DOMINION INSOLVENCY ACT

ITS ESSENTIAL FEATURES, AND THE SPECIAL MACHINERY WHICH WOULD BE REQUIRED TO SIMPLIFY ITS ACTION

BEING THE ESSAY IN COMPETITION I, TO WHICH THE FIRST PRIZE WAS AWARDED

IN considering this question I might note at the outset that as it would be ultra vires for the Provincial legislature to pass an Act dealing with bankruptcy and insolvency, this subject lies wholly within the province of the Dominion Parliament, hence if we are to have an Insolvency Act it must necessarily be a Dominion Insolvency Act and have operation equally in all the Provinces of the Dominion.

Aside from this however, one of the strongest arguments in favor of the passage of an Insolvency Law would be a unifying of the law and practice in the different Provinces, in so far as they deal with the assets, rights and liabilities of persons who are unable to pay their debts in full. Such a unification would be a matter of great convenience, not only to those in one Province extending credit to traders in another, but also, I should think, to merchants and manufacturers in the United States, Great Britain and other foreign countries who have dealings with traders in several of the Provinces of the Dominion, and who if they are to thoroughly understand their position and the risks which they are taking in each case, must under present conditions be familiar with as many different systems and laws as there are Provinces.

For this reason amongst others there is no question but that the establishment of a common and equitable law throughout the whole Dominion would greatly improve this country's foreign credit.

THE FIRST ESSENTIAL FEATURE THEREFORE WOULD BE

An Insolvency Act to apply, with the slightest possible variation, to all Provinces alike. The force of this will be seen when we remember that up to a year or two ago, while the laws in Ontario provided for a reasonably equitable distribution of an insolvent's assets, yet in some of the other Provinces it was possible for a bankrupt, even when making an assignment ostensibly for the benefit of his creditors, to declare a preference in favour of one or more of them, which had in the result the effect of enabling them to be paid in full, while the remainder of his creditors received absolutely nothing.

The next essential feature of such a law would be to place a creditor in a position to force his debtor to assign, upon proper grounds being shown and upon the creditor making a demand to that effect, and I would suggest in this regard that on a debtor committing an "act of insolvency" (which term might be broadly defined as doing anything which would unjustly prejudice all or any of his creditors—for example, absconding from the country, concealing himself or his effects, or conniving at any seizure), or in the event of his ceasing to pay his debts generally, which might also be termed an act of insolvency, his creditor or creditors having claims of one hundred dollars or over should be at liberty to apply to the Court for an order adjudging the debtor a bankrupt. The court upon being satisfied by affidavit or otherwise that there is just cause for making such a declaration should issue an order directing the sheriff of the district or county in which the debtor resides to take possession of the assets of the estate, and to hold them in trust until a liquidator shall have been appointed by the creditors. The sheriff, pending the appointment of such liquidator, should not incur any expense beyond that necessary for the simple and effectual guardianship of the assets. This plan would, I think, do away with the greatest causes for complaint under the Act of 1875, for

First.—It would make the creditor certain that upon short notice he could deprive the debtor of further control over, and further power to make disposition of his property, and have the property transferred into judicial hands. Feeling certain of

being able to do this at any moment, the creditor could then afford to treat the debtor as leniently as the case justified, and give him every opportunity to "pull through," to use a common phrase, contrary to the present state of affairs, where the creditors, urged by uncertainty as to what might become of the assets of the debtor before they could get judgment and execution, are sometimes unnecessarily harsh and exacting.

Second.—Under the old Act official assignees were appointed, whose duty and business it was to handle the estates of insolvents, and who depended for a livelihood on their fees in connection with these estates. As may be very well imagined these men were too anxious that debtors should go into insolvency, and when they did so, were far from sparing in their charges. The result of this was that many debtors were tempted, so to speak, into bankruptcy as a profitable venture, that others were forced into it without reasonable cause, and that the assets were eaten up by fees and charges. It is even alleged that official assignees at that time lent themselves to local rings formed against creditors at a distance.

All this I think would be overcome by putting the estate in the first instance as above suggested in the hands of the sheriff, an officer who is already comfortably fixed in regard to income, and is almost always a man of somewhat superior position, and by having the estate afterwards transferred to such person as the creditors might appoint.

If such an order is granted without previous notice to the debtor, a limited time might be given him, say three days, after receiving the notice that he had been declared a bankrupt, in which he might protest against the order if he so desired, and take steps to have it rescinded, and in the event of his being able to show to the satisfaction of the court that he had done nothing with intent to defraud, that his embarrassment, if any, was but temporary, or for any other reason that the order had been improperly or unnecessarily made, the court should have power to cancel the same.

Upon receiving such an order it would be the sheriff's duty to take possession of all the assets of the debtor, including his books; to go through the books and ascertain as far as possible

all the creditors of the debtor, and to notify such creditors by mail and also by advertisement of the fact of the bankruptcy, and to call a meeting at his office or other convenient place as early as might be reasonable under the circumstances in each case. At this meeting the creditors would then have power to appoint a liquidator satisfactory to themselves, but who, after his appointment, ought also to be approved of by the court.

Upon such appointment and approbation the liquidator would take over the assets of the insolvent from the sheriff and proceed to wind up the estate on behalf of the creditors. The appointment of a liquidator should only be made by the votes of the creditors representing a majority in amount of claims provable against the estate.

Provision should likewise be made for the appointment of inspectors, if the creditors so desired. Whether they should receive a stated fee, or whether it should be left to the discretion of the creditors to vote them remuneration at the meeting at which they were appointed or some subsequent meeting, is a matter which may be open to discussion. I am inclined to think that the latter would be the proper course.

The next essential feature is that there should be reasonable provision for an insolvent getting a discharge if his insolvency has come about without dishonesty, and if his estate pays a fair dividend, or shows that he has exercised ordinary commercial prudence; but in no case should anyone get a discharge who has not kept proper books of account.

The condition above mentioned that a discharge should only be obtained where proper books, etc., have been kept, is most important, because it seems to me that one of the chief faults of the present law, and of some of the previous Acts, is that too often through the selfishness of creditors looking only to their own immediate interests, or what they think to be their immediate interests, men are discharged or allowed to make compositions and settlements, who, speaking commercially at any rate if not legally, would be much better sent to jail. Nothing I think could be more ruinous to the growth of trade, or to the ultimate commercial standing and commercial integrity of a community than the discharge of a debtor, who by

dishonest or fraudulent practices or by gross carelessness, which is almost another word for dishonesty, has become insolvent. I feel very strongly that people generally look too lightly upon the practice of defrauding one's creditors, and are altogether too ready to trust again the persons who have been guilty of such practices. There should be no distinction whatever between the position of a man in the community who deliberately and intentionally defrauds his creditors, and that of a man who obtains money or property by false pretences or forgery.

At the same time it must be remembered that it is possible for an honest and capable man to be forced by unforeseen and unfortunate circumstances into bankruptcy, and when such is really the case it is certainly in the interests of the country and of trade in general that such a man should not for the future be prevented from carrying on business, and that he should receive a full discharge.

Now I cannot help thinking that as long as the matter of a discharge is left to the discretion of the majority of the creditors there will always be room for fraudulent collusion between a certain number of the creditors and a dishonest insolvent, such as an arrangement with the creditor to vote for a discharge of the debtor in the hope that he will receive a large percentage of his future business, or even, in spite of all laws to the contrary, that he will, owing to some secret bargain or understanding, receive a future additional payment on the old account. This might be largely overcome by allowing the creditors simply to recommend to the court the granting of a discharge or the contrary, which the court, after hearing the evidence in the case and allowing time for any objections to be raised, might or might not act upon. In this case, of course, due notice would have to be given to all known creditors by mail and advertisement, in order that they might take the opportunity to protest if they so desired.

Even this, however, although a great improvement on simply leaving the whole matter to the creditors, still seems to come short of the desired mark, for creditors when they come to consider the question of whether they will grant a discharge or not are more apt to look to the size of the dividend which they re-

ceive than to the honesty or dishonesty, ability or lack of ability of the debtor. I therefore think that while the estate may be handed by the sheriff to a liquidator, who shall on behalf of and pursuant to the instructions of the creditors or the inspectors, if such have been appointed, wind it up to the best possible advantage, yet there should be some judicial officer appointed whose duty it would be at the request of any creditor, or even in a proper case on his own motion, to require that the books of the debtor be handed over to him for a thorough inspection, and that the insolvent be held for examination on oath.

This officer should be paid by the Federal Government, and should have no remuneration derived from the estate, and consequently no end to serve in connection with the estate, or in either prejudicing or favouring the insolvent. It should be his duty to minutely examine all the insolvent's books and statements of account, and by questioning him under oath in regard to the same to discover the cause of his insolvency, and whether he has been guilty of any dishonesty or carelessness in connection with his business, and I think that this course ought to be adopted in every case where the debtor makes an application for a discharge, and that the decision of the court ought to be to a large extent based upon the report of this officer.

Under these provisions no interested creditor could procure the discharge of a dishonest debtor, nor could creditors through mere annoyance and petulance prevent the discharge of an honest but unfortunate one.

It seems to me that the expense of maintaining such an officer in each Province would not be such a heavy charge upon the Federal Government. In fact the duties might almost be added to those of some of the present minor judicial officers.

While considering the question of discharging debtors, it must not be thought that I would for a moment suggest that a debtor could clear himself in respect of all and every debt or liability. On the contrary there are several classes of liabilities which the debtor ought not to be relieved of in this general way; for instance, claims which under the Insolvency Act are privileged claims would certainly have to be paid in full before the court could grant a discharge. Further, any debts incurred

by the insolvent in the capacity of a trustee, executor or administrator could not fairly be included in any composition with his trade creditors.

The same rule would apply to all debts incurred by reason of fraud or fraudulent breach of trust to which the insolvent had been a party, as well as to any judgment recovered in respect of damages, especially when the damages involved any malicious act on the part of the debtor, such as libel or assault, or any debt incurred for the maintenance of a parent, wife or child.

I also think that the suggestion made by Hon. Mr. Fortin, who introduced an Insolvency Act last year, was a very fair and proper one, namely: that the discharge should not apply, without the express consent of the creditors, to debts of a non-commercial nature due to non-traders. This would serve to protect a large class of the community who might have casual transactions with traders, and only casual transactions, and who could not themselves be ranked as traders, and should therefore be specially safeguarded.

One objection to this provision is that there might be danger of a dishonest man on the eve of his insolvency getting together enough money to pay off all such liabilities, leaving only such debts as he could get a discharge in respect of, but I think such danger would be reduced to a minimum by the appointment of the Government officer as suggested above, who would certainly be able to discover any such conduct upon his investigation of the insolvent's accounts. It would also be prevented to a large extent by the provision previously suggested, that the estate of the bankrupt must pay a fair dividend before he could get a discharge. It would be just as well to leave the question of what is a fair dividend open for decision in each particular case, instead of stipulating any definite rate on the dollar, as a dividend might be a fair one under the circumstances of one case which would be an altogether inadequate dividend in another case, either through special circumstances peculiar to the case, or through the difference arising from loss and shrinkage on winding up different classes of businesses. Nor should the discharge free any person who might be secondarily liable to the creditors, such as the drawer or endorser of

negotiable paper, except to the extent to which the estate may pay the creditor. If, however, the surety himself paid the creditor in full or in part, the surety would then be entitled to rank on the estate for as much as he had paid.

The next essential feature is that there should be provision made for the fair and equitable ranking on the estate of all having claims provable against it. Under this head there will come of course some items which clearly should have a distinct preference over the ordinary creditors. First among such claims would come the remuneration of the liquidator, the Government tax, if any, levied for the support of the special Government officer which I have suggested, and any remuneration which may have been voted to the inspectors, together with the other necessary expenses incurred in winding up the estate. After these would come any arrears of salaries or wages due to persons in the employment of the insolvent. A limit might be placed on this item of three or six months' wages, and on any arrears over that time the employee would have to rank simply as an ordinary creditor. A similar arrangement should also be made in reference to arrears of rent, which should rank as a privileged claim for the six months immediately preceding the date of insolvency, and in the event of the insolvent having leased the property for a period which has not expired at the time of his insolvency, some provision ought to be made allowing the lessor to prove against the estate for a reasonable sum to compensate him for having his property again thrown upon his hands.

Any debts owing by the insolvent and not yet due should, notwithstanding this fact, be provable against the estate, but interest should be allowed for the period of credit yet to run.

A creditor who holds security should be obliged to set a value upon it, and to rank upon the estate for the balance only of his claim, or if the liquidator so requires it, should be obliged to assign his security at the value placed upon it, and should thus be entitled to rank upon the estate for the full amount of his claim.

In the event of a creditor discovering that he has made an erroneous estimate of the value of his security, or if prior to the final distribution of the estate its value is materially altered, he

should be at liberty to re-value it on showing, to the satisfaction of the court, that the original valuation was honestly made on a mistaken estimate, or that the change which has since occurred has in fact altered its value. Such an alteration in value would be very evident in a case where for instance the security was in the form of a promissory note endorsed by the insolvent, which at the time of the valuation the creditor expected would be paid at maturity by the maker, but which the maker has in the meantime allowed to be dishonored.

It must of course be understood also that if the liquidator and inspectors were satisfied to allow the new valuation to be made it would not be necessary to go to the expense of bringing the matter before the court.

There should be a very clear understanding as to the position of creditors holding negotiable paper, the maker and endorser of which have both become insolvent.

It has been held by many that the creditor, in this case usually a bank, should value both securities, which would plainly make it impossible to obtain one hundred cents on the dollar.

I beg leave to think that this is most unjust for this among other reasons: that whereas the average trader makes from ten to thirty-five per cent. upon goods sold at one, two, three or four months, a bank stands to make only about two per cent. for the same time. It would seem, therefore, only fair that these institutions, so necessary to the carrying on of any extensive trade, should be specially safe-guarded against a loss for which their meagre profit can by no means be expected to provide. Provision could of course be made against their obtaining by such double ranking more than one hundred cents.

It is almost unnecessary to state that the Act should require all claims against the debtor to be proved by affidavit filed with the liquidator, and should also provide that the liquidator may, where it appears proper, refuse to pay and may contest any claim, and that he should also have power under the direction of the inspectors to settle and compromise any claims against the estate which may be in any way questionable, and which it may be cheaper or wiser to settle than to contest.

TORONTO T. G. MCMASTER

ON THE BEST SAFE-GUARDS AGAINST ROBBERY OF A BANK BY AN EMPLOYEE OR AN OUTSIDER

BEING THE ESSAY IN COMPETITION II, TO WHICH THE FIRST PRIZE WAS AWARDED

THIS is a very interesting subject, and one which perhaps affects bankers in a greater degree than any one of the subjects selected by the Committee in the past.

It is proposed in this paper to treat the matter briefly, and to endeavour to touch upon every phase of the subject which may present itself.

We all know that robbery by an employee of a bank occurs more often than we should like to have it. Robbery of this class may be effected in many ways, but is most frequently the act of one official unconsciously assisted by the collective negligence of his fellow clerks. Instances in which two clerks have been concerned are rarer, as the risk of detection is greatly increased, and the fear that before or after the robbery has been accomplished one may inform against the other, perhaps through a desire to save himself, will always operate as a deterrent.

The system of joint custody of cash and securities now so general, combined with a rigid and thorough checking of the teller's cash at frequent periods, has proven itself a satisfactory method and an excellent preventative of crime.

Let it ever be the manager's or accountant's duty to prove all things, to assume nothing, to satisfy themselves that for every dollar represented in the teller's blotter there is an actual dollar on hand. Frequent counting and inspection of the cash lodged in treasury compartment of the cash safe should never be neglected. Arrange to have this done at irregular as well as regular intervals. The manager should never omit this duty, notwithstanding that he may be the joint custodian of the

cash and securities, and that the safe may never have been opened except by him or in his presence. Constant vigilance in this regard cannot be too closely insisted upon, as long immunity from loss is very apt to make us less watchful than we should and must be. It is of little use or avail to argue that your staff is honest. All are until proved otherwise; and we should ever remember that when a bank official robs a bank he is going to do it just as skilfully and as largely as he possibly can. Subterfuge and cunning, such as we little suspected young "Smith" or "Jones" of being capable of, will be resorted to when either or both have the robbery of their employers under consideration or in execution.

Well do they know that they are risking everything, imperilling their futures, recognizing fully in the well-known words of the "private secretary," that if "discovered they are lost," to prevent which we may be sure that much cleverness will be resorted to to carry their act of wrong doing to a successful conclusion. It is only by careful watching, thorough checking and general supervision that these unfortunate acts can be prevented or detected. It is the duty of every officer, senior and junior, to see to this, for I hold that every junior clerk of a bank ought not only to know his own duties well, and to do them, but to acquire as great a knowledge of every others' duties as he can, consistently with his relation toward his seniors.

It would be of no service to enter into a detailed account of the method of book-keeping in vogue in any one bank, as the terms of one bank differ so much from those of another as in many instances to render such a description of little value. Suffice it to say that most of the banks, if not all of them, adopt "double entry," which means a pretty thorough check upon every transaction, attested in many cases by the initials of the checking officers, or of those making the entry. The conception of individual responsibility cannot be carried too far. Each officer must fully recognize that he alone is responsible for what he may have in hand, until he has passed it on, or otherwise disposed of it, and seen his receipt or authority therefor duly and properly recorded in the books of the bank.

As the teller is the clerk most closely connected with the

bank's cash, and as it is with him that a shortage most usually occurs, he possibly comes in for a greater share of checking and inspection than do the officers outside the "box," and this is just the point which I consider should be emphasized. While not relaxing watchfulness in his direction, we must keep a careful eye upon the other members of the staff, with whom in event of contemplated robbery, he might be in collusion or he might not. While it is heartily conceded that one should consider every clerk an honest man until he has proven himself to be a rogue, this acceptance must not be permitted to interfere with the discharge of our duty, with which we must always proceed fearlessly and conscientiously. If an official's conduct seems to invite suspicion or call for investigation, such investigation shall be gone through with, no matter who is hurt, honesty and integrity must always be upheld. Justice has never been a respecter of persons, and if the suspected one afterwards emerges from under the cloud with a clean record, such fact clearly established can only add to his good standing and increase the trust and confidence hitherto reposed in him by his employers.

This course is the only proper one to adopt, and will prevent many an incipient plan of robbery from becoming anything else.

To briefly illustrate what is meant by a rigid and systematic form of checking perhaps it might be profitable to follow briefly the progress of a cash remittance from one branch of a bank to another.

For instance, a Winnipeg branch has been requested to supply a country branch with a remittance of $10,000 for circulation, and we find that it proceeds in the following manner: The Winnipeg teller having been instructed by his manager or accountant to make up and despatch a package of $10,000 to the country office will, we shall say, select ten packages of one hundred tens, and entering the total sum in a "register of remittances despatched," credits himself with the amount, passes out the cash to two clerks, who count it, and having satisfied themselves that there are $10,000 in the package, seal it up ready for despatch, and both initial the register, certifying to

the amount of the remittance. The package is then taken to the express or post-office and a receipt obtained for it; two officers always accompanying the package to the express or post-office. The correspondence clerk, from particulars furnished him by the "remittances despatched register," now advises the country branch that there has gone forward to it, by express or registered mail, a remittance, as the case may be, No. so and so, consisting of one thousand tens (ten thousand dollars) and requests acknowledgment by return mail, at the same time despatching a memorandum of the transaction to head office. In due time the remittance is received, and after the seals have been carefully examined and the package opened by manager or accountant, it is counted by the teller in presence of a second clerk, and if found correct is duly entered in the "register of remittances received" and initalled for by the teller, who receives the money into his cash and charges himself with it. Advice of receipt is then sent to Winnipeg as well as per memorandum to head office, which has meantime been keeping a record of its own of the despatch and receipt of branch remittances. Should money be required to replenish, or as an addition to the "treasury," then the joint custodians, manager and teller, or any other two officers holding such custody, must separately count the notes and make entry in writing, as well as in figures, of the amount in a journal familiarly known as the "treasury" book which must be signed by both and lodged with the cash in the treasury compartment of the safe. Full particulars of this addition must be supplied to head office which is thereby enabled to keep a record of the total notes held at its various branch establishments as a cash reserve. It is almost superfluous to observe that if these precautions, devised and planned by a careful head office, were always executed with the exactness that it is intended they should be, we would hear very seldom of the lost or stolen remittance. These few remarks merely form an index to the code of general rules laid down for the guidance and governance of their staffs by most banks, and if each particular rule in regard to each particular transaction were as faithfully carried out as it ought to be, disappearing treasuries and other unfortunate things of that kind would soon become very much rarer than they are even at the present time.

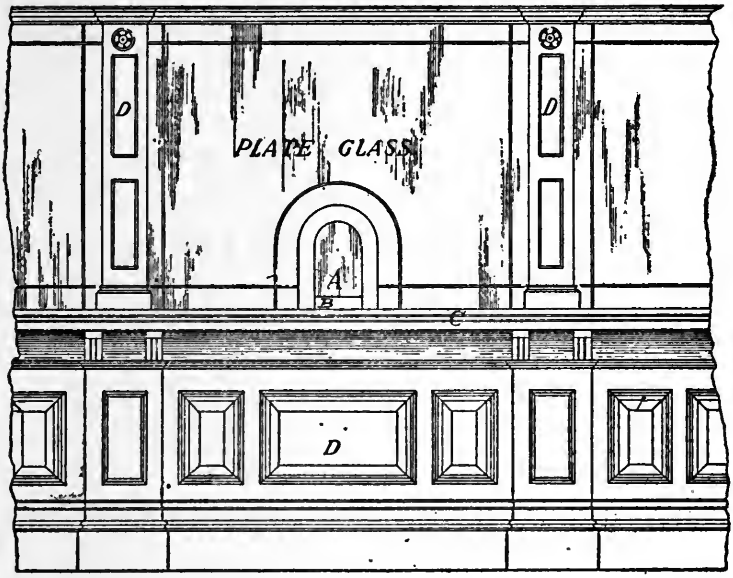
It is the neglect of these safeguards that causes much of the trouble. To carefulness in minor matters may be attributed half the success of a bank, or indeed any business; to carelessness half of its losses.

For carelessness there can be no excuse, and those who expect any to be accepted must meet with disappointment.

Every member of a bank's staff has had the importance of carefulness and exactness inculcated in him since he began his career. He has been surrounded by head office circulars, by rules for this and that, by books of regulations, none of which are very difficult to observe, he has had high examples in the persons of many of his superior officers which he might have emulated, but neglected, and as a result loss has ensued, loss which is sometimes more far-reaching in its effects than can ever be estimated, and this must be charged to nothing more, nothing less, than carelessness, the most fruitful source of trouble that general managers, inspectors and others in high places have to guard against and contend with.

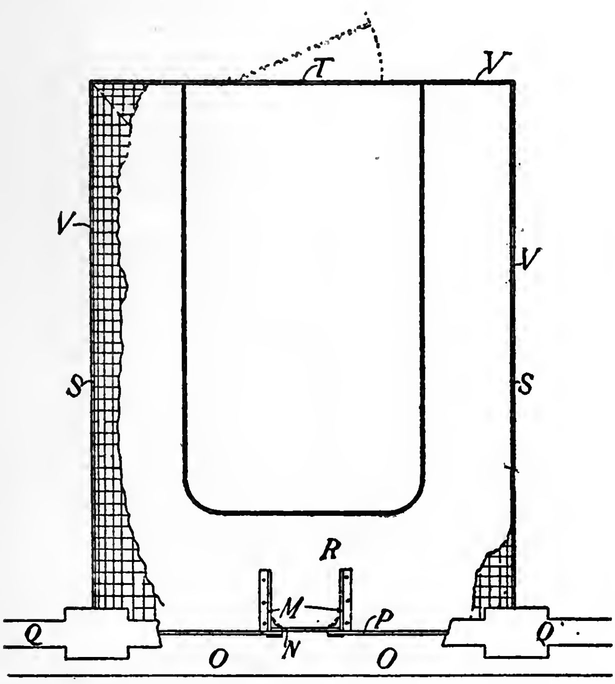
THE TELLER'S BOX

It is a duty which every bank owes to its teller to give him a good strong telling box. On the teller devolves heavy responsibility and great risk, and every aid should be afforded him to lighten that responsibility by giving him greater security and minimizing the risk of loss. There is such a thing as foolish economy, and it is well brought to our notice when we find, as we do find occasionally, a poor, rickety, shaky cage doing duty as a teller's box. The accompanying illustration conveys some idea of what seems to me to be a most satisfactory style of telling box. It will afford as nearly perfect security from loss by counter robbery as it is possible to obtain, assuming that the teller uses ordinary care in the keeping of his cash and endeavours to observe the few rules for the managing of his box which are given a little further on. The telling box illustrated here it will be seen is supplied with a heavy plate glass front, which, while affording the teller a full view of the office, closes it in entirely, with the exception of the space reserved for the wicket, which is also composed of heavy plate glass encased in



A—Plate glass
B—Open space

C—Outside counter
D—Oak panel



M—Plate glass, interior of wicket rising from counter to height of 2 ft. N—Open space under front wicket, 2 in. O—Outside ledge counter. P—Plate glass front telling box. Q—Oak uprights. R—Telling table or counter. S—Slides for vouchers. T—Door. V—Wirework sides and roof.

brass frame, locking on the inside with a spring lock. The space of say two inches at foot of wicket is sufficient for the ordinary passing out and in of cash. The box is roofed with extra strong brass wire mesh. The sides, beginning at say three and one-half feet from the floor, are of the same material, resting on a strong oak frame or foundation. The door, which is the same as the sides, is fitted with a powerful spring, and opens only to a key or keys in the absolute possession of teller, or teller and manager. On either side of the interior of the public wicket there is a glass plate as illustrated in the cut. These afford protection from the hooked stick manipulator who has been known to operate with more or less success on past occasions. The cash drawers are also supplied with a spring lock, to be used in event of necessity calling a teller from his post. There is nothing intricate, elaborate or unnecessary about a box of this style, and it will be found to commend itself to the use of bankers solely by its simplicity and security.

A FEW RULES FOR THE GUIDANCE OF TELLERS

Too great stress cannot be laid upon the injunction given to every teller to keep his cash off the counter. Keep it out of sight, in its proper place, the cash drawer. Have a separate drawer or tray under your telling table whereon to place the cash received from customers as counted, but which you may not be able to sort at the moment. Get rid of one customer's deposit before you attempt to receive a second. Do not endeavour to pay two customers at one time; this will cause loss. Tellers shall never leave telling box except in case of necessity. Any books which they may require must be handed them by some officer of the staff.

Always look closely at the person who requires you to change a one hundred dollar bill, also at the bill. Tellers should not accept packages of silver, said to contain "so much," from any but the oldest and most trusted customers of the bank, in dealing with whom the custom may perhaps be indulged in to a limited extent. These hints it will be seen contain nothing novel, but if adhered to will prove invaluable to good telling.

CASH AND BOOK VAULTS

What constitutes a burglar proof vault?

The question is a difficult one to answer. In the light of recent events one is almost tempted to reply that such a thing does not yet exist. The genius of the scientific bank burglar appears to triumph over everything so far invented.

Love, it has been said, laughs at locksmiths, but our nineteenth century vault breaker hardly has a smile for the best and most ingenious of our many contrivances for the safe keeping of our cash.

It is apparently a matter of little difficulty to him to gain ingress to the best class of vault or safe of which we can at present boast.

It would be extremely hard to single out any particular make of safe as being less susceptible to wrecking than another. All seemingly offer about as little or as much resistence to scientific burglary as to make selection nearly impossible.

The safe does not appear to be in existence which affords absolute security from the attack of the safe-cracking fraternity of the day.

We construct our fire-proof vault to resist fire, built of hard compressed brick, let us say four deep, with the usual air chamber of one inch and a half in the centre of the wall. We build upon a solid stone or concrete foundation, we line with fine steel and asbestos, we brace the walls at top to prevent spreading with strong iron rods, we fit it with a modern double iron door, and it withstands the fiercest and hottest fire, and establishes its claim to be recognized as a fire-proof vault. But such satisfactory results cannot always be expected of our burglar-proof vault, and we must reluctantly admit that the term as at present applied savours somewhat of a misnomer.

It would seem as though our only hope lay in night watchmen. But someone remarks, "Are not night watchmen liable to be surprised or overpowered?" They are, we grant it; and it must therefore be our duty and endeavour to so safeguard our night watchmen that they will be the better fitted to in turn safeguard our vaults. An arrangement whereby the sleeping guard (and by the term "night watchmen" let it

be understood we include the ordinary bank clerk on guard at night, and at his desk by day, who must necessarily get his sleep) shall be protected from attack, without ample warning. Such might be achieved by a system of electric alarms which could be attached to door and window. This can be done without entailing any very great expense.

Alarms which ring in response to a foot fall have long been in operation in Europe. They are sunk almost level with the flooring and can scarcely be distinguished from it even in daylight, so similar in appearance is the material of which they are constructed.

The flooring for some considerable distance round and in front of the vault door might be prepared in this manner, and so prevent approach to the vault without due warning.

The electric alarm is in high favour with many continental banking houses, and there is no reason why it should not prove itself an even more popular and efficient alarm throughout Canadian banks than it perhaps at present is.

These alarms are connected with the sleeping apartment of the clerk or other official on guard. Where practicable it is always better to have the guard's sleeping chamber immediately over the vault, as by having a hole cut through the floor of this apartment to communicate with the office below, a clear view may always be had of the vault door, and the guard would be enabled to use his revolver in case of necessity. In many large offices a special night watchman is employed whose duties commence at or about seven o'clock in the evening and continue uninterrupted until relieved by the arrival of the caretaker in the morning. In cases of this kind nothing further would appear to be necessary, but without one or other of these plans, it must be conceded that we leave ourselves very much exposed to night robbery.

In connection with the matter of night protection, the remarks of a Toronto inspector of police, in regard to the Bowmanville robbery of a few months ago, are singularly appropriate. He says: "Banks as a general rule do not take enough precautions to prevent robberies, as in a majority of cases they have no watchman sleeping on their premises. In

many private and corporate banks (the Bowmanville bank being a case in point), bankers rely entirely on the protection afforded by the town or village policeman." In the case of the Standard Bank robbery, circumstances seem greatly to have aided the robbers, the night policeman being, we were informed at the time by the press, an undersized and aged man, utterly incapable of making any resistance against burglars, while the safe was alleged to be some twenty-five or thirty years old, and could not well be considered very modern. Had it been so, it might have presented greater difficulties to the men in the insertion of their explosives.

Modern safes whose doors are supplied with rubber tubing (which, by the way, to be of much service must be frequently renewed so as to keep it soft, pliable and air-tight) might perhaps make it harder to insert an explosive than in the case of those safes in which the rubber has been allowed to become hardened and contracted.

In brief, and speaking generally, most bank robberies may be attributed to carelessness, and the neglect of the most ordinary precautions against burglary. A man on guard, a good watch dog, an electric alarm, or an able-bodied night policeman, might have prevented the Bowmanville episode; and these remarks may be generally applied to other burglaries of more or less recent occurrence.

It would not be difficult to cite several instances of bank robbery in Canada, and indeed in England, of late years, which are attributable—if not in every case directly, certainly indirectly—to neglect of duty.

No duty is so unimportant that we can neglect its full and perfect performance; no duty so minor that it can be overlooked. The banking business is one which is fraught with large risks and great responsibilities, and its successful conduct requires careful attention to its minutest detail. All must strive to make and keep the profession a profession to be proud of, and so conduct themselves that their profession may be proud of them.

THE SAFEKEEPING OF COMBINATIONS

Some laxity appears to prevail in certain Canadian banks in the matter of combination figures, these being made known by one officer to another in a very unwise degree. It has been the practice in some offices, where the tellers have been given a day's absence on bank or private business, to surrender their combination figures to the clerks who take their places during their absences, the same figures being made use of by the tellers on their return. It is only necessary to briefly attract attention to this point, and to urge that every precaution be observed in keeping each officer's combination figures absolutely secret. It is surely no great burden to impose upon tellers and others entrusted with the safe keeping of cash that they exercise the greatest care in this particular. Let them always realize that absence, no matter how brief, from the telling box necessitates the setting of a new combination. Without the strict observance of this rule it is idle to talk of safe-guarding the teller's cash. Different courses are pursued with regard to the keeping of the envelopes containing combination figures. One bank perhaps lodges them with its head office; another with a neighbouring branch; a third with some other bank. All plans appear reasonably safe and satisfactory; but of the three, that of depositing these sealed envelopes with a bank's own head office must commend itself as the most natural and most secure.

Too much stress cannot well be laid upon the paramount importance of keeping every accessory modern and up-to-date. In this particular, attention may be directed to the "time lock" for safes and vaults. The banker who has one of these ingenious contrivances not only increases his protection against burglary, but places himself in a very much securer position against the safe locks being tampered with by any members of the staff. Such a lock gives and assures a degree of security which is otherwise unattainable.

Canadian bankers realize this and are going in for the "time lock" much more extensively of late. While time locks are by no means inexpensive, we do not consider that they are so costly that a bank should neglect them. A small robbery (which a "time lock" might have prevented) would in many

instances pay for a large enough number of locks to equip a bank's branches many times over. This has rightly been termed the age of invention, and doubtless ere very long the "time lock" will have been superseded by something newer, safer and more efficient. In the meantime, however, it is the most modern contrivance of which we know, and it behooves bankers to avail themselves of the measure of protection which it affords.

In concluding this paper we think it a matter of fact upon which Canadian banks may felicitate themselves, that robbery by their employees is of such rare occurrence as it is. That it does occur is of course a matter of deep regret, but we cannot disguise from ourselves the fact that it is one of those unfortunate things which will be a burden upon us as long as the world goes on. Our object has been and will be to prevent robbery of this nature as well as every other, and while we may never entirely succeed, we cannot fail by constant care and vigilance to greatly diminish it.

The comparative rarity of improper conduct by bank officials often tempts us to praise the honesty and integrity which seems so large a part of Canadian banking life.

This, however, is simply what every banker has been trained to expect, and is another evidence of the care which has been aforetime exercised in the selection of those who were afterwards to fill responsible positions. Honesty and integrity, the ability to read and understand men and conditions; these qualities constitute a successful banker's stock-in-trade. With these attributes he must become a power in his profession.

A few words anent a bank's attitude towards its employees and we have done. Something is due the faithful officer in the way of a fair and generous salary. Let us not be misunderstood here. What the rank and file of a bank's staff want is not an inducement to be honest, but a recognition of merit and a recompense for services honestly and faithfully rendered.

Every bank is asked to see to it that its clerks receive a "living" salary. This will always prove a paying investment.

Salaries vary largely in different Canadian banks, and while it cannot be said that any institution is prodigal in this regard, it must be remarked that some banks pay much more liberally than others. Instances of tellers in large and busy centres who

are paid not more than $500 per annum are not altogether unknown. This is less than many a grocer's assistant receives, whose responsibility is light when compared with that assumed by a bank teller.

This is a matter which merits the attention of every bank, as it is becoming recognized that if a bank would keep its service up to a satisfactory and efficient standard, it must pay in proportion. While the assumption is that every bank officer—irrespective of the salary paid him—will use his best efforts in the promotion of his employer's interests, we cannot conceal from ourselves the fact that these efforts will be strengthened and stimulated by his employer's generous recognition of them.

Finally, let every bank officer lay to heart the knowledge that he must stand or fall by his own personal conduct and action. That if he is careful and conscientious in the performance of his duty, he must be successful in his profession. Some men are created with carefulness and exactness embodied in their natures; others, less fortunate, must cultivate these excellent and necessary qualities. None may hesitate about taking the right course as against the wrong, although they may imagine that they see a right end to be attained through following a wrong method. Probity must always rule their actions, honesty govern their dealings, and honour control their conduct. By keeping these qualities ever with them, they will find their positions strengthened in a possible time of temptation or doubt.

H. G. P. Deans

Brandon, Man.

CORRESPONDENCE

NEGOTIATING CHEQUES ON OTHER BANKS—BANK COLLECTION ACCOUNT

THE following letter is addressed to the President of the Canadian Bankers' Association by Mr. D. Cameron, Manager of the Merchants Bank of Halifax, Shubenacadie, N.S.:

"DEAR SIR,—As you are aware, when a bank cashes a cheque on another bank which has to be mailed direct for returns, the amount has to stand for several days at the debit of 'Bank Collections.'

"It occurs to me that there is a possible method whereby entries, time and postage could be economized.

"Let the cashing bank mail the cheque to the drawee for credit of *drawee's head office* (or other principal city office).

"At the same time let the cashing bank forward to its own head office (or other principal city office) a clearing house voucher. This voucher will be self-explanatory. It will be numbered and show on its face its import. It will serve as a demand upon the drawer's head office to pay on presentation through the clearing house the amount, or proceeds of the cheque on the drawee. On receipt of the cheque the drawee will advise its own head office, but it should not be necessary to acknowledge receipt of the remitting bank's letter.

"In case of dishonour the cheque would be returned through the clearing house with costs, if any, added.

"If you think this suggestion worth discussing I shall be glad.

"I trust the annual meeting will be very interesting and successful. I am, yours truly,

D. CAMERON"

A SUGGESTED FORM:

CANADIAN BANKERS' ASSOCIATION

CLEARING HOUSE VOUCHER

No......

Remitted { by Atlantic Bank, Dundee Branch,
to Pacific Bank, Gorton Branch.

C. No...... One thousand dollars ($1,000), for settlement hereby through Montreal Clearing House.

..........................Manager

THE TRAINING OF BANK CLERKS.

To the Editing Committee:

GENTLEMEN,—As the education of bank clerks, in practical banking, is to my mind of vital importance, perhaps you would give attention and space in your columns to some suggestions from one who experiences the lack of opportunities.

It is a fact that the majority of bank clerks receive no education in banking beyond their own experiences, which oftentimes amount to very little. Would it not, therefore, be a good idea for the bank clerks in the large towns and cities, where they are in sufficient number, to form themselves into associations for mutual improvement? I am sure the banks would lend their financial assistance if required.

The members might all be associates of the C. B. A. and have the benefit of the JOURNAL of the Association. All the best authorities on banking should be in the library. Reading, studying and discussing these books together could not help but improve the mind of the average bank clerk, and would tend to keep him away from places and pleasures that would do him less good.

Then, say once a month, it might, perhaps, be arranged to have some eminent banker deliver an address or lecture on some interesting banking subject. The only objection I see to the above is that our bank clerks in the country (where I am) would be unable to reap any benefit until they have the good fortune to be moved to a town where such an organization exists.

Yours truly,

M. B. C.

Nov. 25th, 1899.

A FORMULA FOR THE CONVERSION OF STERLING INTO CURRENCY

To the Editing Committee:

DEAR SIRS,—I do not know if the subjoined simple formula for the converting of sterling into dollars is very generally known to the majority of bankers in Canada, and I am of the opinion that it will be new to some, at least, of the younger members of the banking world, so I take the liberty of sending it to you, and if you think it worth publishing, I will hope to see it appear at some time in the JOURNAL.

There are occasions when an exchange table is not at hand, and this formula may be of use to someone at some time. I would also suggest that someone posted in the matter of

Sterling Exchange and kindred subjects, should write an article on the reason for the enclosed formula, and generally explain the subject, so that bank clerks, generally, may get a better understanding of this subject, which is not too well known to a great many of them, especially the younger officers.

Yours truly,

W. F. Cooper

Petrolia, Nov. 29th, 1899

TO CONVERT STERLING INTO DOLLARS

Multiply the amount by four times the rate of exchange, and divide that sum by 90.

It should be said that the rate is to be taken as say 109½ for example, and that multiplied by four.

EXAMPLE

£100 @ 9½d.

Four times the rate of exchange would be—

109½ multiplied by 4, equals........ .... 438.

£100 multipled by 438, equals .... 43800.

Divide 43800 by 90, equals ....486.66.

It will be found that this will apply to any other rate, this one being given as an illustration.

QUESTIONS ON POINTS OF PRACTICAL INTEREST

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value, the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Bill at three months sent by the holder for collection—Neglect of collecting agents to present for acceptance until near the date of maturity

QUESTION 273.—A bill dated 30th August, at three months, drawn by A in favour of B on the —— Mfg. Co. in the State of New York, was endorsed by B and discounted with a branch of the Y— Bank. It was forwarded at once by the Y— bank to their branch at Niagara Falls for collection and promptly sent on to the latter's Buffalo correspondents, who held it unaccepted until a few days before maturity. Acceptance was then refused and the bill was protested and returned to the Y— Bank. The drawer and endorser claim to be released from liability because of want of diligence in the presentation of the bill. Could the amount be recovered from the Buffalo Bank, and if not, what is the position of the Y— Bank as regards the drawer and endorser?

ANSWER.—The above question was submitted to counsel by the Y— Bank, and by their courtesy we are permitted to publish the opinion given in the matter, as follows:—

"On this state of facts, we cannot advise that the Buffalo Bank is liable to the Y— Bank for anything more than nominal damages. If the Buffalo Bank had been a holder of the

bill in the same way as the Y— Bank, it would have been under no obligation to present the bill for acceptance. Any obligation on its part so to do, arose because of its duty to the Y— Bank, as agent of the latter for collection.

"We are of opinion that the Buffalo Bank should, as such agent, have promptly presented the bill for acceptance, such a presentation being advisable from the point of view of the Y— Bank, because of the further security it would obtain should the bill be accepted, and because, should it be dishonoured a right of immediate recourse against the drawer and endorser would accrue, and that for its want of diligence in this respect the Buffalo Bank is liable to the Y— Bank in damages.

"But, beyond merely nominal damages, the Y— Bank could not, in an action against the Buffalo Bank, recover except for loss actually sustained by reason of the negligence of the latter bank, and, on the assumption that the bank's rights against the drawer and endorser have not been affected by the delay in presentation for acceptance, and that the drawer and endorser are financially responsible for the amount, we do not think that the bank has, in fact, sustained any actual loss by the negligence of its agent. It must be borne in mind that the Buffalo Bank was agent of the Y— Bank only, and not of the drawer and endorser. Had the Y— Bank been bound to the drawer and endorser to use diligence in presentation, so that failure to effect prompt presentation might have given the drawer or endorser a remedy against the bank, then, it might well be that the Y— Bank would have a corresponding remedy against its agent, but, on the state of facts given us this does not appear to be the case.

Joint and several note charged after maturity to the account of one of the makers—Rate of interest chargeable for the time over-due

Question 274.—A and B are liable jointly and severally on a note which has been discounted by the bank, B being, in effect, a surety only. The note is unpaid, and some time after maturity the bank charges it to B's account, who has had a balance with them at all times exceeding the amount of the note. Can they charge him with the full rate of interest, or only such a rate as they allowed on his deposit?

Answer.—The bank is entitled to collect the full amount of the note and interest until it is paid by the parties, or either of them, or until the bank chooses to charge it against B's account. In the province of Ontario the bank has a right of set off, but is not bound to exercise it, and pending its exercise the deposit on the one hand and the note on the other, remain

as two separate liabilities, each carrying its own results as to interest, etc. The law in Quebec as to set off differs somewhat from that in Ontario, and what we have said above might not apply there.

Note drawn in favour of a bank with no place of payment specified

QUESTION 275.—A joint and several note made by three parties is drawn in favour of a bank, but there are no words indicating that it is payable to its order or to bearer. The note is dated at the place where issued, but no place of payment is specified in it.

In the event of the bank having to sue the parties, is its position quite as good as if the note had been made payable at its office, and to its order?

ANSWER.—The bank is under no disadvantage as regards the place of payment, except in respect to the matters mentioned in Sec. 86 of the Act, and this can be obviated by presenting the bill, at any time before proceedings are taken, to each of the promissors.

The point as to the omission of the words "or order" or "or bearer," is not material. Under sec. 8, sub-sec. 4, a note drawn as above described is payable to order.

Certified cheque—Would the drawee bank be justified in refusing payment on the drawer's instructions?

QUESTION 276.—Would a bank be justified in refusing to pay a certified cheque if instructions had been received from the drawer to stop payment?

ANSWER.—The bank by certifying or accepting a cheque has come into privity with the payee, and the drawer's right to countermand payment is at an end. This question is dealt with fully in previous issues of the JOURNAL.

Draft with bill of lading attached, cashed by a bank. Has the acceptor any recourse against the bank if the bill of lading should prove to be forged, or if the goods are not as ordered?

QUESTION 277.—A bank has cashed a draft with bill of lading attached, the goods being shipped to order of the bank. Has the drawee any recourse against the bank if the goods are not as ordered, or in the event of shipping bill being a forgery? Does the bank in any way guarantee its genuineness?

ANSWER.—We think the bank assumes no responsibility to the drawee in such a case. He has been instructed by the drawer to pay so much money, which he has done. Even if it be said

that the instructions were conditional on the documents attached being surrendered, this would involve nothing further than that the bank should surrender the documents received from the drawer, whatever they may be. We think, however, that if the bank should negotiate the draft to another bank, it might be held responsible to the latter for the genuineness of the documents.

Cheque to the order of "John Smith, collector of customs," endorsed by the assistant or acting collector

QUESTION 278.—A cheque is payable to "John Smith, collector of customs." Are the following endorsements in order:

James Brown, assistant collector, or
William Jones, acting collector?

ANSWER.—The above endorsements are not in order, although it is quite likely that the circumstances would justify the bank in accepting them. The payment to the assistant or acting collector would not be valid if the cheque were given to John Smith as his personal property.

Bill drawn payable at one bank, and accepted payable at another

QUESTION 279.—A draft drawn as follows: "Pay to the order of myself at the Canadian Bank of Commerce, Montreal," is sent to the Merchants Bank of Canada, Montreal, for collection, and accepted payable at the latter bank. Where should the draft be presented when due? Should the latter pay it, seeing that there may be doubt as to where it is really payable?

ANSWER.—Section 19, 2a., declares this acceptance to be "not conditional or qualified," therefore it is a general acceptance, that is, an unqualified assent by the drawee to the order of the drawer, in this case an undertaking to pay as the drawer has instructed, namely, at the Canadian Bank of Commerce. The bill may therefore be presented for payment at the latter bank.

Sub-section 2 of section 45 (see d. 1.) declares that where a place of payment is specified in the bill or acceptance and the bill is there presented, such presentment is properly made. Under this rule it would seem proper to present the bill at the place named by the acceptor, so that the effect of the whole is to give the holder the right to present for payment at either place. The provisions in the Act were evidently intended to legalize the previously existing practice of naming the place of payment in the acceptance and not in the body of the bill (a practice of unquestioned convenience), and there has been no

case before the courts since, where a different place of payment has been named in each. As the cases must be rare we should think it best to present such acceptances at both places named and so avoid all doubt.

There is, we think, no question of the right of the bank at which the acceptor has domiciled the bill to pay it on his behalf if this payment is otherwise in order. In doing so it is acting on the acceptor's authority.

Power of attorney to accept bills in favour of a bank manager—Omission to accept

QUESTION 280.—The manager of a bank which holds a bill for collection receives from the drawee a power of attorney on the form in common use authorizing him to accept the bill. This he neglects to do, but attaches the power of attorney to it. Would this give the holder of the bill a right to sue the customer?

ANSWER.—Clearly not, on the bill. We understand that the form in general use contains an undertaking to pay as well as authority to accept, and it might be said that this is a contract with the collecting bank entitling it to a remedy on contract. There is no reason why the power to accept should not be exercised after maturity.

Surviving partner's right to operate the firm's bank account

QUESTION 281.—Is the surviving partner of a firm legally entitled to operate the banking account of the firm upon the death of his partner, notwithstanding the absence of any agreement to that effect, and to use the funds in hand or any other firm funds deposited, by checking it out in the name of the firm?

ANSWER.—The deposit being a joint one the surviving partner becomes entitled to withdraw it under the law of survivorship.

Bill of Exchange payable to a married woman in the Province of Quebec

QUESTION 282.—May a cheque or bill, payable to a married woman residing in the Province of Quebec, whether she has or has not a marriage contract, be properly paid or negotiated on her endorsement alone, and without her husband's consent?

If the act of payment or negotiation took place outside of the Province of Quebec, would that make any difference in the position of the parties?

ANSWER.—We are of opinion that the provisions of the Bills of Exchange Act must govern with respect to the powers of a married woman in the matter of endorsing or negotiating cheques and bills of exchange, and wherever these differ from the Quebec law they must prevail.

So far as her capacity to incur liability as an endorser is concerned, the Act leaves the matter untouched. Section 22 makes "capacity to incur liability co-extensive with capacity to contract." If under the code she is not able to contract, her endorsement on a bill does not create any liability on her part as an endorser.

This does not, however, affect her power to endorse or negotiate a cheque or bill in such a way that the drawee may lawfully pay it, or the transferee become the lawful holder.

Under sections 54 and 55 of the Act, both the acceptor and the drawer are precluded from denying the capacity of a payee to endorse, and a subsequent endorser is precluded from denying the regularity of the previous endorsements. Under these sections, therefore, if a bank should accept a cheque payable to a married woman, it is bound to pay it on her own endorsement, for it is precluded from denying her capacity to endorse. If the bank is so bound it clearly has the right to charge the cheque when paid to the drawer's account, but apart from this the drawer also is precluded from denying the capacity of the payee to endorse.

Considering that a bank is bound to pay its customers' cheques according to their tenor, and that in making a cheque payable to a married woman, the drawer in effect declares (because of such preclusion) that the amount is to be paid to her notwithstanding any disability she may be under, we think that a bank in the Province of Quebec is not only not bound to require the husband's authorization, but might be liable to its customer for damages should it refuse his cheque because of the absence of such authorization only.

The question being a very important one, we thought it well to submit it to counsel in the Province of Quebec, from whom we received the following reply:

> "I am of opinion that under the law of this Province "the wife may endorse so as to pass the title to a bill of "exchange, even though she does not make herself liable, "and that a plea of her incapacity could not be raised by "an endorser, drawer, or acceptor, as they are precluded "from doing so by the Bills of Exchange Act, sections 54 "and 55."

As regards the second part of the question, the effect of payment or negotiation outside of the Province of Quebec, we think that the relative rights of the parties would depend upon

the law where the transaction took place. A married woman is under no disability that would call her endorsement into question in any Province other than Quebec.

Presentment of a cheque for payment—Due Diligence

QUESTION 283.—A suburban office of a city bank (or a bank not a member of the Clearing House) receives a cheque from a customer on Saturday at ten o'clock a.m., hands the same to its city office (or its clearing bank) on Monday, and such city office (or clearing bank) presents it for payment on Tuesday through the Clearing House. Was the said cheque, in your opinion, presented for payment within a reasonable time within the meaning of the Bills of Exchange Act?

ANSWER.—We think so. The question is to be determined by the nature of the instrument, the usage of trade, and the facts of the particular case (section 45*b*). It is customary for persons receiving cheques to deposit them with their bankers, for such bankers to forward them to their correspondents for collection, when they are not drawn on banks with which they make direct exchanges, and for these correspondents to present them for payment through the Clearing House or otherwise on the following day. If such a mode of collection is admitted to be reasonable, and each party negotiates or forwards the cheque within twenty-four hours after it is received by him, the procedure is clearly in order. The Act contemplates a negotiation of cheques, which might delay their presentment without necessarily discharging the endorser. (See section 36 (3), and compare section 40 as to sight bills).

Cheque cashed by a branch of a bank other than the branch on which it was drawn—Sent for collection and lost in the mails

QUESTION 284.—A cheque on a bank in Hamilton in favour of A, was cashed for him by a bank in Toronto. It was forwarded by mail in due course for presentment, but the letter has not reached its destination, and the drawer has since failed. What are the bank's rights against the drawer of the cheque and against A?

ANSWER.—Under clause 46 of the Bills of Exchange Act, "delay in making presentment for payment is excused when the "delay is caused by circumstances beyond the control of the "holder." Delay through loss in the mails is, we think, such as comes within this definition. The bank's right against the drawer and endorser of the above cheque are therefore just such

as they would be against similar parties to a bill which is not due, and they continue liable thereon until the cause of delay ceases to operate.

The bank's remedy in the case is provided by sections 68 and 69 of the Act. It has a right to demand a duplicate cheque from the drawer on giving suitable indemnity, and if this is then duly presented, and, if dishonoured, notice given, suit can be brought against the drawer and endorser.

The maker of an endorsed note assigns his estate for the benefit of creditors—Should the note be protested without waiting for maturity?

QUESTION 285.—The maker of a note (discounted for a customer—payee) becomes insolvent. The note is not yet due, and has another endorser who has lent his name as surety for the maker. Should the note be protested as soon as the assignment is gazetted? Or should no action be taken till maturity.

ANSWER.—Nothing can be done until the note matures and is dishonoured.

QUESTION 286.—(submitted in continuation of the foregoing).

You say that nothing can be done until the note matures and is dishonoured. If this is the case, what is the meaning of sub-section 5, section 51, Bills of Exchange Act, which is as follows? :—

"Where the acceptor of a bill becomes bankrupt or sus-
"pends payment before it matures, the holder may cause the
"bill to be protested for better security against the drawer and
"endorsers."

ANSWER.—Under this provision the bill may undoubtedly be protested for better security, but the Act gives no remedy against any party until the bill matures. The only result under our law of such a protest would be to enable any friend of the drawer or endorser to accept for honour if he wished to do so. The holder, except in such a case, would get no advantage under our law from the protest. The provision was no doubt for the purpose of enabling the Canadian holder of a foreign bill to obtain any remedy in such cases which foreign laws give, *e.g.*, in France.

Bill drawn to mature on 31st October (including grace), accepted "payable 31st October"

QUESTION 287.—A bill dated 28th August, and payable two months after date, which would make it due on 31st October, is

accepted by the drawee, who adds to his acceptance the following words: "Payable 31st October." Does this affect the due date?

ANSWER—We presume our correspondent thinks that if the acceptor's statement is to be treated as part of the bill, three days of grace must be allowed after 31st October, but we do not think that it has this effect. The bill, according to the Act, is "due and payable on the last day of grace," and the acceptor has merely noted this in a concrete form.

If it were otherwise, the acceptance would not be one which the holder should take.

Deposit in name of "A B for C D"—Right of A B's creditors to garnish the moneys

QUESTION 288.—A B deposits money as follows: "A B for C D," but C D to have no power to draw. Can a debtor garnish this money for a private debt of A B?

ANSWER.—If the money, as a matter of fact, is A B's money, it can be garnished. If it is C D's money, of which A B is trustee only, it cannot be touched by A B's creditors.

Request for payment of a note sent to the maker in an unsealed envelope

QUESTION 289.—A bank notifies the promissor on a note held by it, requesting payment. The envelope containing the notice was not sealed. Can the party claim damages from the bank for the open letter?

ANSWER.—This gives the party no claim for damages, unless the statement in the notice is false and it is sent maliciously.

New stock issued by a bank—Allotment to executors who are not authorized to invest more money in bank stocks

QUESTION 290.—The trustees of an estate are entitled to an allotment of new stock about to be issued by a bank, at a price which would give them considerable profit, but they are debarred by the terms of the trust from investing further moneys in bank stocks. Is there anything in the Bank Act which would authorize their disposing of their rights to the new shares, or are they under any disqualification as trustees in this respect?

ANSWER.—Leaving out of consideration the right of the directors to make regulations respecting the transfer of shares,

which would not be likely to affect the question, no special authority in the Act is necessary to enable shareholders to sell their rights to the new shares, and trustees have the same power in this respect as other shareholders, which they would, we think, be bound to exercise.

Circulation Redemption Fund—Notes issued in excess of paid-up capital

QUESTION 291.—Does the Circulation Redemption Fund guarantee the notes of a bank where they are (1) issued in excess of the paid-up capital, or (2) signed or issued by an unauthorized officer?

ANSWER.—If the notes are in either case notes of the bank for which it is legally liable, then they must be paid out of the Redemption Fund if not redeemed by the bank.

Right of a bank to hold funds at credit of a deceased depositor against unmatured obligations of the latter

QUESTION 292.—(1) A bank's customer at his death has a deposit in his own name, believed to be his own money. The bank holds unmatured paper on which he is a promissor or endorser. Can the bank hold the money until this paper has matured and then charge the same against his account? How if the estate is insolvent?

(2) How would it be if it were shown that although the money stood in his own name, it was really trust money?

ANSWER.—(1) The bank could not hold the money if an executor or administrator duly appointed should bring suit for the amount before the bills mature, but would be entitled to set off any bills maturing before action brought. We think the same result would follow if the estate were insolvent.

(2) The fact that the money was trust money, if not known to the bank, would not affect the right to set-off. (See *Union Bank of Australia v. Murray Aynsley*, in the JOURNAL for April, 1899.)

Cheque payable to the order of a failed firm

QUESTION 293.—Referring to question No. 237, supposing an assignment for the benefit of creditors were made by a *firm*, say John Smith & Co. Would the endorsement of this firm, which is *commercially dead*, be a discharge to the bank cashing a cheque payable to the firm's order? Would it not be necessary to have the endorsement of the assignee?

Answer.—We assume that the assignment by the firm worked a dissolution of the partnership. The law is well settled that the dissolution of a firm operates as a revocation of the authority of each partner to bind the other by new contracts, etc; but this statement must be modified with respect to the authority of the partners to arrange, liquidate and settle the affairs of the firm. As an assignment by the firm would vest in the assignee the ownership of the assets, he only has authority to wind up the business, by collecting the assets.

It must be borne in mind that the assignee is assignee only of the assets of the firm; he does not represent the firm generally, nor has he power to use its name unless expressly authorized to do so by the assignment or by some statute. If the cheque was given for a debt due to the firm the receipt of the money by the assignee and his endorsement of the cheque would probably for all practical purposes end any question as to the sufficiency of the endorsement.

But this practical question must not be confounded with the legal question involved. The assignee (unless expressly authorized as already mentioned) would have no power to endorse the firm's name, and the endorsement of his own name would not answer the order of the drawer of the cheque. The drawer's direction is to pay to the order of the firm. We do not think that, under the circumstances indicated in the question, the cheque could be treated as payable to a fictitious or non-existing person, and, in the absence of express authority from the other partners, we think that the endorsement of the name of the firm by one partner would not be technically sufficient; it would require the endorsement of each member, or of someone authorized by each member to endorse the dissolved firm's name.

As indicated above, the question would not be likely to arise if the money got into the proper hands. It would be more likely to arise if the cheque were presented, not by the assignee, but by some other person claiming title through the previous endorsement.

Joint deposits

Question 294.—John Billings opens a Savings Bank account in the name of "John Billings and Mary Billings or either." John Billings dies. Is the bank justified in paying the amount to the executors of John Billings, or must it only pay on a cheque of Mary Billings? Should Mary Billings be the executrix, would it make any difference?

Answer.—The executors have no control. The money is payable to Mary Billings alone. See the reply to question No. 233.

Legal Bank holidays

QUESTION 295.—What holidays may a bank observe? In the case of a civic holiday, where all the banks in the place, finding by 12 o'clock that the bills they hold have all been arranged for, close their offices at that hour, what is the result if some private holder of a bill due that day, or of a cheque, presents the same after the bank is closed, and it is thereby dishonored?

ANSWER.—Banks in Canada may legally observe any holiday they choose to keep, provided that in closing up their offices they are not breaking their contract with their customers, which may be either expressed or implied. A bank which opens a current account in effect agrees with the customer that it will be ready to honour his cheques if presented within the ordinary business hours recognized among bankers. If it should without notice decide not to open or not to keep open the office on any particular business day, and the customer's cheque should thereby be dishonored, we think it would be liable to him for damages.

The existing practice among banks, of keeping someone in the office on holidays which are not statutory holidays, to answer demands such as the above, seems to imply an understanding on this point which amounts to a contract, but this may be modified, on reasonable notice, to any degree. We would think it reasonable that banks, in common with their neighbours, should keep the local holidays, and that it should be understood that as soon as all notes and acceptances due have been arranged, the offices will be closed for the day. The closing of the offices on any day after reasonable notice involves no responsibility.

Warehouse receipts

QUESTION 296.—Referring to your answer to question 269 (Vol. VII., page 39), is not the description of the place where goods are stored an essential point in a warehouse receipt? The statement of Mr. Lash in his article (Vol. II., p. 71) would seem to indicate that the description is necessary.

ANSWER.—In the statement mentioned Mr. Lash has reference to security under Sec. 74, which, to be valid, must comply strictly with the terms of the Act. These are, among other requirements, an assignment in the form given in Schedule C (which provides for a statement of the place where stored) or in a form "to the like effect." If a form were used which contained no reference to the place, it could scarcely be said to be "to the like effect."

A warehouse receipt, on the other hand, is defined as "Any receipt given by any person for any goods, wares or "merchandise in his actual, visible and continued possession, "as bailee thereof in good faith, and not as his own property." Nothing is said as to the place of storage, and there are only two conditions laid down: that it shall be receipt given for goods belonging to another, and that they shall be in the actual possession of the one who gives it.

Bill payable "two and one-half months after date"

QUESTION 297.—What do you think is the correct due date of a bill dated 24th August, 1899, and payable two and a-half months after date?

ANSWER.—Two months from 24th August would be 24th October, and apparently the question to be determined is when a half month from the latter date would end. In our opinion this is not determinable and the bill in consequence is not a bill of exchange within the meaning of the Act, as it is not payable at a fixed future time. See a discussion of this point in answer to question 189, Vol. VI., p. 211.

Cheque received from a customer on deposit, with a prior endorsement forged

QUESTION 298.—A cheque in favour of one T. A., and purporting to be endorsed by him, is received from a customer of ours on deposit; he endorses the cheque after T. A. We send it to another bank, which collects the amount from the drawee bank, but first stamps on the cheque a guarantee of the prior endorsements. This guarantee is given without the authority of the prior endorsers. T. A.'s endorsement proves to be a forgery. Is the liability of our customer affected by the guarantee, and what is its effect generally?

ANSWER.—Assuming that notice of the forgery has been given within reasonable time, as required by the amendment to section 24 of the Bills of Exchange Act, your customer must repay the amount. His liability is not affected by the guarantee of the prior endorsements, which in this case is a contract only between the bank which guarantees and the drawee bank.

The effect of such a guarantee generally is to make the guarantor liable to return the amount to a subsequent holder if the endorsements prove to be forged or unauthorized. The law imposes practically the same liability without the guarantee, but liability under Sec. 24 (as amended) is conditional on reasonable notice being given after discovery, while liability under a

guarantee is a matter of contract, which might exist until barred by the statute of limitations. The guaranteeing bank might therefore be liable under its contract of guarantee, under circumstances in which the prior endorsers would be discharged, by reason of want of notice within reasonable time.

We do not think guarantees should be asked or given except for irregular endorsements, as provided in the rules adopted by the Association, but that each bank paying or negotiating a cheque should do so on the protection afforded by the Statute, and subject to the performance of its duty in connection therewith.

Bank Money Orders

Question 299.—A branch of a bank which has agreed to cash orders at par, cashed a bank money order and sent it to their agents in Montreal. These agents had not entered into the agreement to cash these orders at par, and acting under the old agreement they retained half the commission for themselves. Is the bank as agent for the cashing bank entitled to half the commission?

Answer—It is difficult to say what the legal rights of the bank would be, but we certainly think that on equitable grounds they should not collect commission.

Demand draft with bill of lading "For Payment"—Goods delayed in transit

Question 300.—A demand draft with bill of lading attached, to be held for payment, is received for collection. The goods, owing to delay in transit, will not arrive for three weeks, and the drawee refuses to pay until the goods arrive. No instructions have been given to hold the draft. Is the collecting bank excused from protesting it?

Answer—The drawer would be discharged if the draft were held over without notice of dishonour being given him, and the collecting bank would be responsible for the bill.

Cheque to "order" endorsed by the payee "without recourse"

Question 301.—(1) A cheque payable to order is presented for payment by the payee, bearing above the endorsement the words "Without recourse to me." Should the bank refuse payment?

(2) Is there any danger in negotiating a marked cheque so endorsed by the payee?

ANSWER—(1) If the payee of a cheque, who is receiving payment thereof from the bank on which it is drawn, chooses to write over his signature the words "Without recourse to me," we do not think that need affect the willingness of the bank to pay. The bank has in such a case no claim on him as endorser, and this disclaimer is mere surplusage. It would not relieve him from liability to return the money if it should prove that he is not the proper person to whom the money should have been paid, *i.e.*, that he is not really the payee.

(2) The danger in negotiating a marked cheque on another bank so endorsed, is that the endorser would not be liable if the bank were to repudiate the marking or were to fail. Such an endorsement would not relieve the endorser from liability to return the money if it has been wrongfully paid him.

Pass books—Current account and Savings Bank

QUESTION 302.—(1) Is there any legal reason whereby a savings bank pass book is different from an ordinary current account pass book?

(2) If not, why is there generally an impression that the savings bank book is different from the other and more important?

(3) A savings bank book states on the fly leaf that "the pass book must always be brought to the bank when money is withdrawn." Can the bank decline to pay if the pass book is not produced?

(4) Are the rules laid down by the bank in the pass book binding upon the customer?

ANSWER—(1) The difference is purely a matter of convenience.

(2) It is no doubt regarded as more important because it must be produced when money is drawn, and because it serves as a receipt for special deposits often left untouched for a long period.

(3-4) The conditions in the pass book are binding on the customer, and the bank is entitled to demand the production of the pass book as a condition of payment. Of course if it were destroyed the same results would follow as in other similar cases; the bank could not withhold payment on proof of loss. On the other hand it incurs no risk if payment is made without production of the pass book to the true owner of the money.

Funds of a Society at credit of a deceased depositor

QUESTION 303.—A married woman who has some money at her credit, believed to be held by her for a church society, dies,

leaving a husband and minor children. The society claims the money. What should the bank do? Would it be liable to the children if the money were paid to the society?

Answer.—If it is quite clear that the money was in fact held by the deceased in trust for the society, there would be no risk in paying it to the society. A bond of indemnity should be taken, and the husband's admission of the society's rights. It would be well also to have a statutory declaration from some other person who knows the facts. The children could only get at the matter by procuring letters of administration of the estate. The administrator would undoubtedly have control of the deposit, but he would be bound under the conditions mentioned to pay it over to the society; so that the children would gain nothing.

Trust Companies

Question 304.—Why do Trust companies in Canada require such large paid-up capitals? How do they employ their money?

Answer—Trust companies doubtless find that their business and credit are best subserved by having large capitals, and that their shareholders prefer to have the stock paid up in full rather than partially paid, because of the liability attached to the latter. The Government returns show what investments are made of the capital.

Debentures held by a Bank as collateral—Neglect of Bank to present the coupons promptly

Question 305.—A bond with coupons attached is held by a bank as collateral security. They neglect to collect the coupons as they mature, and ultimately when the bond matures it is found to be uncollectible. The customer claims credit for the overdue coupons. Is the bank responsible?

Answer.—The relations between the bank and the customer are scarcely indicated with sufficient clearness to enable us to answer this question definitely. On the bare facts stated we should say that as the customer was not entitled to receive the coupons, but was bound to leave them, or their proceeds, with the bank as security, the duty of collecting them fell on the latter. If then, as a matter of fact, the coupons would have been paid if duly presented at maturity, the bank would be responsible for the loss caused by their non-presentation.

Government Bank statement—Directors' liability

Question 306.—Can you inform me why the wording in the bank returns to the Government in regard to directors' liabilities was changed from

> "Aggregate amount of loans to and liabilities, direct and indirect, of directors and firms and partnerships in which they or any of them have any interest"

to the present wording, viz.:

> "*Aggregate amount of loans to directors or firms of which they are partners.*"

It has been suggested that the latter refers only to the direct liability of directors, or firms of which they are partners, and not to the indirect, as it is contended there is a difference between making a loan to a party or firm and discounting business paper for them.

Those who hold the other view do not consider there is any difference, and that the latter form of return requires just the same information former ones called for.

Answer.—The change in the Government Statement respecting Directors' liabilities was adopted, we believe, on the ground that it was not reasonable to show the "indirect" liabilities of directors, and that a bank should not be exposed to criticism merely because it took the precaution of requiring a good endorsement on its loans, even if this endorsement were that of one of its own directors.

As to the difference between the meaning of the present phrase and that previously used, the chief difference is, that where a director (or his firm) is liable on paper which has been discounted for other parties, it is not now shown as part of the directors' liability. This, however, is quite distinct from the question raised, as to whether, under the present clause, business paper discounted for directors should be shown. No doubt the discounting of such paper is not, speaking strictly, a *loan*, but it is so regarded and spoken of in ordinary language, and we think that business paper discounted for a director or his firm should be shown as a liability. We believe that to be the general practice.

Legal

NOTES

Liability of a person who endorses a note before it has been endorsed by the payee.—At various times in the past, relying on the cases in our Courts, we have advised our correspondents that where a person endorses a note for the purpose of becoming surety to the payee for the due payment of the note by the promissor, he is liable to the payee, even if the note had not already been endorsed by the latter. The decision of the English Queen's Bench Division in *Jenkins v. Coomber*, which was reported at page 69 of the current volume of the JOURNAL, and to which we have already called special attention, was quite contrary to the views which had been taken by the Courts in Ontario. In the cases which have since come up here the finding in *Jenkins v. Coomber* has necessarily been followed, and the opinion which we have expressed on this point must be modified.

The case of *The Canadian Bank of Commerce v. Perram*, reported in this number, is in some respects distinguishable from *Jenkins v. Coomber*, inasmuch as the endorser had admittedly put his name on the note for the purpose of guaranteeing payment to the payee, while in *Jenkins v. Coomber* it was not clear that the endorser had placed his name on the bill with any other object than to help the holder to negotiate it. The Perram case was probably as strong on the part of the payee as any case likely to occur, nevertheless under the decision of the Court the endorser was declared not to be liable. This being an appeal from a County Court, the matter cannot be carried further, but we understand that an appeal in a similar case is pending in the Divisional Court.

It would still appear to be the law that where one gives such an endorsement as that under consideration (that is, where

the second endorser becomes a party to the note for the purpose of assuring payment to the payee or first endorser) after the payee has endorsed, he is liable to the payee notwithstanding the order of their names. But an endorsement placed on a note before it has been endorsed by the payee is of no avail to him. As the payee's rights against such an endorser require in any case special proof, outside of the document, it would seem advisable that this form of transaction should be abandoned.

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Claim on the estate of one who has guaranteed payment of unmatured notes.—The finding of the court in *Clapperton v. Mutchmor* suggests some serious considerations for banks which are relying on guarantees for loans made to customers. If it be actually true that an estate assigned under the Ontario Act is held only for the benefit of the then existing creditors, and that one who holds a guarantee from the insolvent for the payment of an unmatured note has no status among these creditors, the value of security given by way of a guarantee is less than is generally supposed. The learned Chancellor's statement of the law is very sweeping: "There would be no debt until the "notes matured and default arose in their payment. * * * * "I do not think the status of a creditor obtained after the "assignment can entitle the plaintiff to rank with those who "were creditors at the date of the assignment." To the ordinary business mind the wording of the Ontario Act would seem wide enough to cover a guarantor as well. The phrase "if a creditor holds a claim based upon negotiable instruments, "on which the debtor is only indirectly or secondarily liable, "and which are not mature or exigible * * *" (Sec. 20, s. s. 5) surely implies some liability on bills other than by endorsement. It is, at any rate, conclusive on the point that there is a liability, and a valid claim, in respect to unmatured bills of other parties, giving the status of creditor under the Act, to one who has not at the time of the assignment any actual claim on the debtor, and who may never become his actual creditor. And it is to be noted that this clause was not inserted for the purpose of enabling such a person to rank as a creditor

under the Act. On the contrary, it takes for granted that one holding such a claim is nevertheless a creditor, and he is mentioned only to have his rights limited and the estate protected.

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Bills of sale not drawn in conformity with the statutory form.—The case of *DeBraam v. Ford* is chiefly interesting as bearing on the strictness with which the Courts may be expected to construe statutory forms in which some classes of securities are required to be taken, and it is specially interesting as showing the need for adhering strictly to the terms of schedule "C" to the Bank Act. The question involved in this case was whether the form given in the schedule to the Bills of Sale Act had been properly complied with. If the view of the Court, that a promise to pay "on or before" a given day is an agreement to pay at an uncertain date, should hold good generally, it would no doubt affect many promissory notes held in Canada, where it is not an uncommon thing to have them made payable in this way. The point is a very narrow one, and we think the phrase might well be interpreted according to its commonly recognized meaning among business people, which, we think, is in effect this: "I promise to pay on (1st November), but I am to have the right to pay before that date if I wish to do so."

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Crossed cheques—meaning of the term "customer" in sec. 82 of the Bills of Exchange Act.—We are glad to have, in *Great Western Railway v. London & County Banking Co.*, a sensible definition of what constitutes a "customer" of a bank, within the meaning of sec. 82 of the Bills of Exchange Act. Hitherto it has been generally supposed that no one would come within this definition except a person having a regular account with the bank, an account at that not merely opened in connection with the particular transaction in dispute. In the case above mentioned, the court has decided that one who has been in the habit of employing a bank to perform banking services for him, in the way of the encashment of cheques, is a customer within the meaning of the Act, notwithstanding that he had no account with the bank.

Stock certificates with power of attorney to transfer endorsed in blank.—As Mr. Lash's article, published in this number, deals very fully with that form of stock exchange security which forms the basis of the dispute in *Smith v. Rogers*, and as the concluding part of the article discusses this particular case, we need not therefore do more now than call our readers' attention to the judgment, which is reported at length in this issue. There are few subjects of greater importance to banks than their rights to stock transferred to them by the delivery of a stock certificate, with a blank power of attorney endorsed thereon. This judgment will set at rest some at least of the doubts which have troubled bankers in respect to these securities.

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Following moneys in the hands of an insolvent.—At the time of the Newfoundland bank failures many of our readers were interested in considering the right of other banks to follow in their hands the proceeds of bills collected but not remitted for. The question is of general interest, and although there is nothing new in *Mutton v. Peat* apart from the special facts that had to be considered, we have thought the case worth reporting.

LEGAL DECISIONS AFFECTING BANKERS

CHANCERY DIVISION, ENGLAND*

Mutton v. Peat

A firm of stockholders had two accounts with their bankers—namely, an ordinary current account and a loan account. The firm became bankrupt, and the bankers thereupon closed the current account and transferred both the balance thereon, being 1,362 l., and an indebtedness on the loan account of 7,500 l., to a special liquidation account. They, however, did not require to appropriate the 1,362 l. to meet the loan account, and repaid themselves by selling securities wrongfully deposited with them by the bankrupts for the purposes of the loan.

Held, that as there had been no appropriation by the bankers of the cash balance, the rule in *Clayton's Case* did not apply, and that there was no equity entitling cestuis que trust of the deposited securities, as against cestuis que trust whose money formed part of the current account, to be paid out of the cash balance.

Messrs. Tatham & Co., stockbrokers, had two accounts with their bankers, Messrs. Glyn, Mills, Currie & Co., one an ordinary account current, the other a loan account.

On January 11, 1896, Messrs. Tatham & Co. paid to the credit of their current account a sum of 790 l. 4 s. 6 d., which they had received from a customer named Parker for investment.

On January 13, 1896, Messrs. Tatham & Co. were declared defaulters on the Stock Exchange. On January 21 a receiving order was made against them, and on January 24 they were adjudicated bankrupt.

On January 20 the bankers closed Messrs. Tatham & Co.'s account, and transferred the balance then standing to the credit of that account—namely, 1,362 l., 10 s.—to a new account opened in the name of Messrs. Tatham & Co. in a book of the bankers devoted to bankruptcies and liquidations. This balance included and was made up in part by the 790 l. 4 s. 6 d. paid by Parker for investment, but which was never in fact invested. It appeared from the loan account of Messrs. Tatham & Co. in the loan book of the bankers that on December 30, 1895, a sum of 7,500 l. was owing on that account, becoming due in course of ordinary dealings on January 16, 1896.

**Law Journal Reports*

The bankers held, and had held since March 30, 1895, certain securities wrongfully deposited by Messrs. Tatham & Co. for securing this indebtedness, and prior to January 20, 1896, the bankers proceeded to realize such securities. On January 20, 1896, the bankers credited Messrs. Tatham & Co.'s new account (hereinafter called the liquidation account) with sums amounting to 3,342 l. 15 s., being proceeds of sale of some of the securities; and on January 22, 1896, they debited the same account as follows: "Loan (part) discharged, 3,340 l.; 20 days' interest to January 20, 3 l. 13 s. 2 d."

On January 24, 1896, the same account was credited with 574 l. 10 s. in respect of a further sale of securities, and was debited as follows: "Loan (part) discharged to 570 l.; 20 days' interest, 15 s."

Further sums were received by the bankers on January 25, 27 and 30, 1896, in respect of sale of securities, all of which sums were duly credited to Messrs. Tatham & Co. in the liquidation account, and on the other side of the same account there appeared the entry under date January 30: "Loan (balance) discharged to 570 l.; 30 days' interest, 5 l. 17 s. 11 d."

It appeared from this account that, so far as entries in their books showed, no part of the balance of 1,362 l. 10 s. transferred from the current account was applied in reduction of the loan account, and that the proceeds of the sale of securities were specially appropriated in discharge of the loan account, leaving a small balance in the hands of the bankers.

On March 20, 1896, the bankers wrote to Messrs. Foyer & Hordern, the solicitors acting for some other person interested, a letter in which they stated that the balance in their hands at the time of the suspension of Messrs. Tatham & Co. would not be needed for the repayment of advances, which were met by the sale of securities, and that they retained the amount of that balance pending possible judicial decision.

The secretary to the bankers made an affidavit in which he exhibited a copy of the liquidation account, and stated that he had in it shown the proceeds received by them in respect of the securities, the dates of receipt of the proceeds, and how such proceeds as well as certain dividends received in respect of some of the said securities were applied by the bankers.

This was a summons taken out by Parker, claiming to be repaid the sum of 790 l. 4 s. 6 d., so paid by him to Messrs. Tatham & Co. for investment, out of the 1,362 l. 10 s., tbe balance transferred to the liquidation account.

Byrne, J., after stating the facts, continued as follows: It is conceded that the bankers might, had they been so minded, have applied the balance transferred from current account in part discharge of the amount due to them on loan account, but they did not do so. They were entitled to appropriate the proceeds of the sale of securities as they did—namely, in discharge of the indebtedness on loan account, to secure which the securities had been deposited. It is to be noted, moreover, that interest is charged in the liquidation account on the amount due in respect of loan account, a part of which would not have been chargeable had the balance of current account been applied in part discharge of loan account.

But it is argued on behalf of owners of securities which have been realized, and which were wrongfully deposited by Messrs. Tatham, being securities belonging to customers of theirs, that it does not matter, as between rival claimants to the funds, what entries the bankers made in their books or what they in fact did by way of appropriation; that as between banker and customer all the accounts make but one account (which is true for certain purposes), and that the rule in *Clayton's Case* ought to be treated as applicable not only as between the bankers and other persons, but as between third parties claiming the balance.

The rule in *Clayton's Case* applies where there is one unbroken account, and it applies as between *cestuis que trust* in an appropriate case. In *The Mecca* Lord Macnaghten cites what was said by Jessel, M.R., in *Hallett's Estate, In re:* "It is a very convenient rule, and I have nothing to say against it unless there is evidence either of agreement to the contrary or of circumstances from which a contrary intention must be presumed, and then of course that which is a mere presumption of law gives way to those other considerations"; and after citing a passage to a similar effect from the judgment of Lord Justice Baggallay in the same case, proceeds to deal with the case before the House of Lords upon the footing of the qualification referred to.

Suppose the bankers had not made any appropriation of the moneys received by them from the sale of securities, but had simply made one account, by means of transfer to the credit of the liquidation account, of the balance on current account, and had added the amount received by them from sale of securities, entering items on the debit side without distinguishing, it may

well be that the rule in *Clayton's Case* would have applied; but I have, in what was actually done by the bankers, clear evidence that they appropriated, as they were clearly entitled to do, specific receipts to payment of a specific balance due from the customer. I think that this excludes the application of the rule in *Clayton's Case*, and I cannot find authority for saying that there exists any equity entitling the *cestuis que trust* of the deposited securities as against the *cestuis que trust* of the transferred balance from current account to require the application of the rule in *Clayton's Case*, or to maintain a right to say that the moneys ought to be deemed to have been dealt with otherwise than they in fact were. I think that Mr. Parker has established his claim. This decision applies also to the other claimants to the cash balance if they succeed in tracing their moneys into the fund.

CHANCERY DIVISION, ENGLAND

De Braam v. Ford *

The moneys secured by a bill of sale were made payable "on or before" a certain date.

Held, that this was not an agreement to pay at a definite date as required by the schedule in the Bills of Sale Act, and that therefore the bill was void.

This was a motion raising an extremely narrow point on the Bills of Sale Act, 1882, which provides (section 9) that bills of sale must be in accordance with the form given in the schedule to the Act. The form provides for payment of the debt secured by instalments "at stipulated times or time." In this case the plaintiff, Jean André de Braam, had borrowed money from the defendant, a money-lender, of Cork-street. The borrower and his wife gave a bill of sale to the lender over certain furniture. It was agreed that payment of the principal sums secured should be made "on or before the first day of November, 1899." The money purported to be secured was not paid, and the defendant was taking steps to realize. The plaintiff issued a writ claiming a declaration that the bill of sale was void, and an injunction to restrain the defendant from removing or seizing the furniture. This motion was made on the part of the plaintiff for an interim injunction.

MR. JUSTICE NORTH said that there was here a question of pure law—on the construction of two documents the form given

* *Times Law Reports.*

in the schedule to the Bills of Sale Act, 1882, and the bill of sale given by the plaintiff. It had been urged that the Court could not decide the question for trial on an interlocutory injunction, but there were cases in which the Court must, to deal with an application for an interlocutory order, decide the question in the action. Here there could be no evidence, and the whole materials were before the Court. His Lordship referred to the cases *Hetherington v. Groome*, and *Sibley v. Higgs*, where it had been held in one case that an agreement to pay "on demand," in the other case that an agreement to pay "seven days after demand" was not an agreement to pay at a stipulated time. He said that an agreement to pay on or before a named day was equally an agreement to pay at an uncertain time, and therefore not in accordance with the form in the schedule to the Act. The present variation from the form might be in favour of the borrower. If the instrument did not accord with the statutory form it was void, whether the variation was in favour of the one party or the other. His Lordship therefore granted an injunction.

QUEEN'S BENCH DIVISION, ENGLAND

Great Western Railway v. London and County Banking Co.*

A rate collector in the employ of a district council falsely pretended to the plaintiffs that a rate had been made, and that they owed a certain sum in respect of it, and by this means obtained from them a cheque for the amount. The cheque was drawn to the order of the collector, was crossed generally, and marked "Not negotiable." The collector cashed the cheque at a branch of the defendants' bank, the account of the district council being, at his request, credited with a portion of the money, and the balance paid out to him and appropriated to his own use. The cheque was sent to the defendants' head office for collection, and was duly presented and paid. The collector had for many years been in the habit of cashing similar cheques through the same branch bank, but he kept no account with the defendants. In an action by the plaintiffs to recover the amount of the cheque as money received to their use, or for the conversion of the cheque,

Held, that the collector was, under the circumstances, a "customer" of the bank, and that they were therefore protected from liability by section 82 of the Bills of Exchange Act, 1882, as having "in good faith and without negligence received payment" of the cheque for him.

The action was brought by the plaintiffs to recover from the defendants 142 l. 10 s. as money received by the defendants to the plaintiffs' use, or in the alternative for damages for the conversion of a cheque drawn by the plaintiffs for the like amount.

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* *Law Journal Reports.*

The material facts are fully set out in the judgment of Bigham, J.

Bigham, J., read the following judgment: This was an action brought for 142 l. 10 s., money had and received by the defendants to the use of the plaintiffs, or, in the alternative, for damages to a like amount for the conversion of a cheque. The facts were as follows: One Huggins had been for many years a rate collector in the employment of the Wantage Rural District Council and of other similar bodies. In this capacity he had been in the habit of receiving from the plaintiffs and others cheques for the amounts payable by them for rates, and the cheques so received he used frequently to cash through the defendants' branch bank at Wantage. He had been in the habit of cashing cheques in this way for fifteen or twenty years, and a considerable number of such cheques (fifty or sixty) were cashed by him in the course of each year. Apparently Huggins, on receipt of the money for the cheques, distributed it among the local bodies to whom he had to account. He was well known to the manager and officials of the bank at Wantage, and the bank were the bankers of the Wantage Rural District Council. Huggins, however, kept no account with the defendants, nor had he any pass book; each of his transactions with the defendents was completely disposed of as and when he brought the cheques. In November, 1898, Huggins falsely pretended to the plaintiffs that a rate had been made, and that the plaintiffs owed in respect of the same 142 l. 10 s. By this means he induced the plaintiffs to give him their cheque for that amount. The cheque was drawn on the London Joint-Stock Bank in favour of Huggins or order; it was crossed generally, and marked "Not negotiable." On November 16 Huggins, in accordance with his usual course of dealing with the defendants, took this cheque to their bank at Wantage to get it cashed. He handed it across the counter to the bank clerk, and the latter filled up a paying-in slip, which Huggins signed. This paying-in slip contained no reference to the cheque itself, but purported to show a payment into the bank of 142 l. 10 s. in money, a payment out to Huggins of 117 l. 10 s., and a payment to the credit of the district council's account at Huggins' request of 25 l. The business effect of this was that the bank handed to Huggins the amount of the cheque. 142 l. 10 s., which he there and then disposed of to his own use. Having thus obtained the cheque, the defendants crossed it to themselves, and sent it up to their head office in London for collection. It was duly presented and paid. The question is whether the defendants are liable to account to the plaintiffs for the money so paid.

Now, if this cheque had neither been crossed nor marked "Not negotiable," there could be no doubt as to the right of the defendants to retain the proceeds. It would be true to say that Huggins' title to it was defective—see section 29, sub-section 2, of the Bills of Exchange Act, 1882; but inasmuch as the defendants took the cheque in good faith and for value, and without any notice of the defect, the plaintiffs would have no cause of action against them. What, then, is the effect of the crossing? The effect of crossing a cheque is stated in section 79, sub-section 2, of the Act. It is that if the banker on whom it is drawn pays it otherwise than to a banker he renders himself liable to the true owner for any loss he may sustain owing to the cheque having been so paid. Then section 80 provides that if the banker on whom the cheque is drawn pays it in good faith and without negligence to another banker he shall stand in the same position as if he had made the payment to the true owner of the cheque. These two sections deal with the liabilities and rights of the banker on whom the cheque is drawn. The next two sections define the position—first of any person who may take a crossed cheque marked "Not negotiable"; and secondly, of a banker who receives payment for a customer of a crossed cheque. Section 81 provides that a person who takes a crossed cheque marked "Not negotiable" shall have no better title than the person from whom he took it had. Section 82 provides that where a banker in good faith and without negligence receives payment for a customer of a crossed cheque, and the customer has no title or a defective title to it, the banker shall incur no liability to the true owner by reason only of having received such payment. Applying the law as contained in these sections to the facts of this case, it appears to me that Huggins, who, as I have said, had only a defective title to the cheque, could give no better title to the defendants, because the cheque was crossed and marked "Not negotiable"; but that though he could only give a defective title to the defendants, yet, if the defendants, being bankers, can show that they did no more than receive payment of the cheque in the manner described in Section 82, they are protected.

Now, I find as a fact that the defendants received the payment in good faith and without negligence. I find also that they received it for Huggins. It was argued that they did not receive it for Huggins, but for themselves. It was said that they bought the cheque; but if by this expression is meant that they took the cheque without recourse, I am clearly of opinion that the contention is wrong. What the bank did was this: They advanced 142 l. 10 s. to Huggins, and Huggins became their debtor to that amount; they then undertook with him to send forward the cheque for collection, and to apply the pro-

ceeds, when received, to the extinguishment of his indebtedness. This, in my opinion, amounted to receiving the money for Huggins. Suppose the bank had not paid anything to Huggins on November 16, could it then be argued that, in presenting the cheque, they were not presenting it for him ? Clearly not; and I cannot see why the fact that they paid him the money on November 16, in anticipation of the payment of the cheque next day in the Clearing House, should make any difference.

Only one question then remains—the real question in the case. Was Huggins a customer within the meaning of section 82 ? Now, whether a person is or is not a customer of a bank must be a question of fact to be determined with reference to the circumstances of each case. It is undesirable to attempt to define what constitutes a man a customer of a bank. It is much better to leave the question at large, so that a jury or the court may deal with each case as it arises. The Act of Parliament has not attempted any definition—banker is defined, but not customer; and I think the Legislature wisely omitted to define the expression. Then was Huggins in fact a customer? I think he was. He had been in the habit for many years of using the defendant bank in connection with transactions which undoubtedly constitute part of a banker's business—namely, the collection of cheques—and he was well known to the bank. This is, I think, sufficient to constitute him a customer within the meaning of the section. I come, therefore to the conclusion that the defendants are entitled to the protection of the section, and are consequently not liable in this action. In these circumstances it becomes unnecessary for me to deal with the other questions raised in argument before me.

High Court of Justice, Ontario

The Canadian Bank of Commerce v. Perram

The defendant put his name on the back of a promissory note before it was endorsed by the plaintiffs, the payees, with the intention of becoming liable as an endorser to the plaintiffs; the payees subsequently endorsed it above defendant's endorsation "without recourse" and sued him on it: *Held*, that he was not liable either as endorser or as surety or otherwise.

The Home Journal Publishing Company, Limited, of which the defendant was manager, through one Carr, procured the plaintiffs to discount a note made by the "The Home Journal Publishing Company, Limited, G. A. Perram, manager," payable to the plaintiffs or order and bearing upon its back the defendant's signature. Perram had endorsed the note with the

intent of becoming liable, as an endorser, to the plaintiffs upon it; he had delivered the note so endorsed to Carr, who, he understood, purposed discounting it with the plaintiffs; and the note was so discounted by Carr with the plaintiffs. The plaintiffs' manager, in discounting the note, relied on defendant's supposed liability as endorser to the bank as part of the bank's security for payment.

After the discount of the note, but before action, the plaintiffs endorsed it above defendant's signature as follows:

"The Canadian Bank of Commerce, D. B. Dewar, manager, without recourse."

The action was tried before McDougall, J., Judge of the County Court of the County of York, on October 27th, 1898, the facts being admitted and the defence contending that Perram, being a party to the note subsequent to the plaintiffs, was not liable to the latter.

On February 4th, 1899, the learned trial Judge delivered judgment in favour of the defendant.

He found the cases on the subject by no means consistent with each other, and had difficulty in reconciling the decision in *Wilkinson v. Unwin* with that in *Steele v. McKinlay*. He thought the facts in the present case nearly identical with those in *Jenkins v. Coomber*, and, being unable to distinguish one case from the other, was of opinion that the plaintiffs could not recover against the defendant in this action.

From this judgment the plaintiffs appealed to the Divisional Court of the High Court of Justice, the first and final Court of Appeal in County Court cases.

The appeal was argued on April 13th, 1899, before Armour, C. J., and Street, J.

The contentions of the plaintiffs may be summarized as follows:

The intent of all parties was to procure from the plaintiffs an advance for repayment of which the defendant should be liable to the plaintiffs. The defendant did not endorse to facilitate further negotiation of the note by the plaintiffs, or with any idea that as a party subsequent to the plaintiffs, he would not be liable to the plaintiffs.

The case is the same as if Perram had gone to the bank,

drawn up and endorsed the note, stated he intended to be liable as endorser to the bank upon it, discounted it and received the proceeds for the makers.

The Privy Council in *Macdonald v. Whitfield* stated the governing principle as follows:

"The liabilities *inter se* of successive endorsers of a bill or "note must, in the absence of all evidence to the contrary, be "determined according to the ordinary principles of the law-"merchant, whereby a prior endorser must indemnify a subse-"quent one. But the whole circumstances attendant upon the "making, issue and transference of a bill or note may be legiti-"mately referred to for the purpose of ascertaining the true rela-"tion to each other of the parties who put their signatures upon "it either as makers or endorsers; and reasonable inferences "derived from these facts and circumstances are admitted to "the effect of qualifying, altering or even inverting the relative "liabilities which the law-merchant would otherwise assign to "them."

It is not sought to charge the defendant as guarantor and the Statute of Frauds does not apply. The defendant is an endorser in law, as well as in intent and in fact, and on his admissions and the authority of *Macdonald v. Whitfield*, is a party prior to the plaintiffs, and an endorser to the plaintiffs.

In *Jenkins v. Coomber* no agreement was shown with the defendant whereby he was to be liable to the plaintiffs. The defendant admitted that he endorsed "in order to carry his son a bit further," which was consistent with an intent to merely facilitate the negotiation of the note to a holder subsequent to the plaintiffs. Perram, on the other hand, cannot deny that he expressly intended to become liable to the bank.

For the defendant the contention was renewed that he could not, as a party subsequent to the plaintiffs, be liable on the note, which was incomplete when he put his name upon it.

The judgment of the Court was delivered September 13th, 1899, by

Armour, C. J.—This action is brought by the plaintiffs against the defendant as endorser of a promissory note dated May 10th, 1897, payable three months after the date thereof to the Canadian Bank of Commerce, London, Ontario, or order,

at the Canadian Bank of Commerce, London, Ontario, for the sum of four hundred and fifty dollars, made by the Home Journal Publishing Company.

At the time the defendant put his name on the back of this promissory note the plaintiffs, the payees, had not endorsed it, and it seems clear that under these circumstances he cannot be held liable upon it. If the plaintiffs, the payees, of this promissory note had endorsed it before the defendant put his name on the back of it, in such case the plaintiffs, although priors endorsers to the defendant, would have been under the admissions in the case clearly entitled to recover the amount of it against the defendant (*Wilkinson v. Unwin*), but not having endorsed it until after he had put his name on the back of it, they are not entitled to recover the amount of it.

The note not having been endorsed by the plaintiffs, the payees, before the defendant put his name on the back of it, he incurred no liability in respect of it. He did not become liable as an endorser under the law-merchant, nor did he become liable as a surety because of the Statute of Frauds.

It is impossible to distinguish this case from that of *Jenkins & Sons v. Coomber*, where the law, as I have stated, is plainly laid down. See also *Steele v. McKinlay*, *Macdonald v. Whitfield*, *Lecaan v. Kirkman*, *Singer v. Elliott*.

The cases of *Peek v. Phippon* and *Duthie v. Essery*, are against the view I have expressed, but I do not think that they are of equal authority with the cases I have relied on, and as this is the ultimate Court of Appeal in this County Court case, we are bound to give our independent judgment.

It was alleged that the note in question was made payable to the plaintiffs through inadvertence, but this we cannot aid or relieve against.

And it was contended that the circumstances showed an implied authority to the plaintiffs to endorse the note, as it was *post pro prius* or *nunc pro tunc* in order to aid the irregularity, but we are unable to infer from the circumstances any such implied authority.

The appeal must therefore be dismissed with costs.

High Court of Justice, Ontario

Clapperton et al. v. Mutchmor*

The plaintiffs, being creditors of an incorporated company, accepted an offer made by the company's president, in a letter addressed to the plaintiffs to "personally guarantee payment" of the company's debt, upon an extension of time being given, and, in order to carry out the arrangement, promissory notes were made by the company payable to the order of the plaintiffs, and endorsed by the president, who made an assignment for the benefit of his creditors, under R. S. O. ch. 147, before the maturity of three of the notes, in respect of which the plaintiffs sought to rank upon his estate in the hands of the defendant as assignee:

Held, following *Jenkins v. Coomber*, that, upon the Statute of Frauds, no action could be maintained on the notes against the president, as to whom the instrument was incomplete.

And although the correspondence and the notes taken together establish an agreement of suretyship, notwithstanding the Statute of Frauds, yet proof could not be made upon such a contract when the notes guaranteed had not matured at the date of the assignment.

This action was brought by William Clapperton & Co. against A. P. Mutchmor, assignee under R. S. O. ch. 147, of the estate of P. Rochon, for a declaration of the plaintiff's right to rank upon the estate of Rochon in the hands of the defendant Mutchmor, in respect of the amounts due upon promissory notes, under the following circumstances:

In July, 1897, the Mercantile Syndicate Company Limited were indebted to the plaintiffs. Rochon, the president of the company, at this time represented to the plaintiffs that the company were in financial difficulties, and interested himself in arranging with the creditors of the company, and with the plaintiffs among others, for an extension of time for the company to meet their liabilities, and wrote a letter to the plaintifts, dated 29th July, 1897, in which he said that the company found themselves unable to meet the plaintiff's account at maturity, "and having the signature of all the principal creditors to the following offer, they respectfully submit the same to yourselves, being an extension of time without interest in equal payments in 3, 6, 9, 12 months. In consideration of all creditors accepting this offer, I will personally guarantee payment." The plaintiffs answered on the 31st July, 1897: "We will accept notes at 3, 6, 9 and 12 months for our account, as you request, provided same are endorsed by yourself."

As a result of this correspondence, four promissory notes, all dated the 2nd August, 1897, were made by the company,

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**Ontario Reports.* Reported by E. B. Brown, Esq.

payable in 3, 6, 9, and 12 months after date, to the order of the plaintiffs, and there was endorsed on each the signature of P. Rochon, and in this form the notes were received by the plaintiffs, and pending their maturity the plaintiffs refrained from asking for payment of their original claim against the company.

The note which matured on the 5th November, 1897, was paid at maturity. The remaining three notes, of which the plaintiffs were the holders, were dishonoured at maturity, but were not protested, and they remained unpaid when this action was brought.

On the 26th January, 1898, Rochon assigned all his estate to the defendant for the benefit of his creditors, under the provisions of R. S. O. ch. 147, and on the 29th January, 1898, an order was made under R. S. C. ch. 129, directing the winding-up of the Mercantile Syndicate Company Limited.

In February, 1898, the plaintiffs filed with the defendant a claim for $406.95 " for promissory notes made by the Mercantile Syndicate Company Limited to the order of P. Rochon and Company, and by them endorsed for value and delivered to said claimants."

In August, 1898, the defendant gave the plaintiffs notice of contestation under R. S. O. ch. 147, sec. 22.

The action (and two others of the same character brought against the same defendants by creditors named Garneau and Lonsdale) were tried together at Ottawa before Boyd, C., without a jury, on the 15th April, 1899.

Boyd, C.: Upon the Statute of Frauds I think this claim is governed by *Jenkins v. Coomber*, so that no action can be maintained upon the note as against Rochon; as to him the instrument was incomplete, and, while it may be used as a piece of evidence going to show a contract of indemnity in respect of the makers of the note, it cannot be used against him as a negotiable instrument on which he is liable as endorser.

I think that the correspondence and the state of facts does sufficiently connect the writings so as to establish an agreement of suretyship, notwithstanding the Statute of Frauds. But then the question arises whether proof can be made on such a contract upon this estate when the notes guaranteed had not matured at the date of the assignment. The Act must now be read as limited to cases of debtor and creditor, and I take it that such relationship must subsist at the date of the assign-

ment. That seems to be implied from the language used in *Grant v. West.* The Chief Justice says as to the Act, now R.S.O. ch. 147: "The legislation is as to a debtor, *i.e.*, in such circumstances that he cannot pay his debts. Creditors are the persons to whom he is indebted:" And Mr. Justice Osler says: "A claim for damages, the liability for which has not been adjudicated at the time of the assignment, and depends upon the result of an action, seems to be quite outside any reasonable construction of this language:" The same is held in *Purefoy v. Purefoy.*

There was no debt in this case at the time of the assignment. There would be no debt till the notes matured and default arose in their payment by the company. Though this time has now elapsed, and all the notes are overdue and unpaid, still I do not think that the status of creditor obtained after the assignment can entitle the plaintiff to rank with those who were creditors at the date of the assignment. The estate transferred was for the benefit of those then creditors, and not of others who might become so by changed conditions in the future. Section 20, sub-sec. 5, would apply to the claim, if it were possible to base it upon the negotiable instrument, but, as I have said, this attitude is repugnant to the case first cited.

The plaintiff's claim is outstanding against Rochon, but cannot be proved, in my opinion, against his estate.

The costs of one test action should be paid to the assignee by the three plaintiffs.

High Court of Justice, Ontario

Smith v. Rogers et al *

The registered owner of shares in a company gave to her brokers, for the purpose of selling the shares, the certificate of ownership upon the face of which the shares were stated to be transferable on the books of the company in person or by attorney upon surrender of the certificate, and upon which was indorsed a transfer and power of attorney, signed by her, and having a blank left for the name of the transferee. The brokers improperly deposited the certificate as security for advances to them with a bank, who received it in the ordinary course of business without any notice of the owner's rights. There was evidence at the trial that, according to the usages of the stock exchanges of Ontario and Quebec, such a share certificate so endorsed passes from hand to hand and is recognized as entitling the holder to deal with the shares as owner and pass the property in them by delivery, or to fill in the blank with his own name and have the shares so registered on the books of the company: *Held*, that the bank was entitled to hold the shares as against the owner. *France v. Clark* (Journal, Vol. III, p. 314), distinguished.

This was an appeal from a judgment of Falconbridge, J., in an action brought by the owner of shares in certain incorpor-

* *Ontario Reports.* Reported by G. A. Boomer, Esq.

ated companies against a firm of brokers, to whom she had entrusted the custody of her share certificates, and a bank to which the brokers had transferred the certificates as security for an advance to themselves.

The action was tried at the Ottawa Assizes on January 19th and 20th, 1898, before Falconbridge, J., without a jury.

Judgment was given by consent against the defendants Rogers and Hubbell, the brokers, but was reserved as against the bank.

FALCONBRIDGE, J.—I find as a fact that the plaintiff is mistaken when she denies the signature to the indorsement of the Montreal Street Railway certificate.

But the result of the recent English authorities is to establish the plaintiff's right to recover against the bank, and there will be judgment against the bank accordingly with costs.

Judgment against Rogers and Hubbell in terms of consent filed.

From this judgment the defendants, the Molsons Bank, appealed, and the appeal was argued on the 9th of September, 1898, before a Divisional Court composed of Meredith, C.J., Rose and MacMahon, J.J.

MEREDITH, C.J.—The proper conclusion upon the evidence is, I think, that according to the usages of the stock exchanges in Ontario and Quebec and the course of dealing in or with shares such as those in question in this case, a share certificate indorsed with a transfer and power of attorney, signed by the person named in the certificate as the owner of the shares, having a blank left for the name of the transferee and attorney, passes from hand to hand and is recognized and treated as entitling the holder of the certificate, so indorsed, to deal with the shares as owner of them and to pass the property in them by the delivery of the certificate, so indorsed, or to fill in the blanks with his own name and to cause the shares to be so registered on the books of the company.

The evidence upon this point was not very strong, but being uncontradicted was sufficient to justify this conclusion.

The question of law which arises on this state of facts is as to the right of the appellants, who received the certificates in question from the defendants Rogers and Hubbell in the ordinary course of business for value and without notice of the plaintiff's rights, to retain them against her, although the dealing with the certificates by the defendants Rogers and Hubbell, was, as between them and the plaintiff, an unauthorized dealing with and fraudulent appropriation to their own use of the plaintiff's property.

My brother Falconbridge, by whom the action was tried, decided, apparently on the authority of *France v. Clark*, that the appellants were not entitled to hold the certificates as against the plaintiff, and that they had acquired no title to them or to the shares, and gave judgment for the plaintiff accordingly.

Since the decision in *France v. Clark*, the question of the rights, as against the true owner, of a transferee who obtains the documents of title under such circumstances as exist in this case, has been considered in several cases.

In *Colonial Bank v. Hepworth*, Mr. Justice Chitty, referring to a practice similar to that which I have said is in this case proved to exist, says: "The plain legal effect of this recognized practice is, that the transferor who executes the transfer in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority."

In *The Colonial Bank v. Cady* the same question was under consideration by the House of Lords. The question to be decided was as to the right of two banks to hold as against the plaintiffs, the executors of one J. M. Williams, certain shares in the New York Central and Hudson River Railroad Compa ny.

Williams, who was the registered owner of the shares, had died, and the plaintiffs, who were his executors, desiring to have the shares transferred to their own names, sent the certific ates to their London brokers for that purpose, having previously signed as executors blank transfers and powers of attorney which were indorsed upon them. The brokers in fraud of the executors delivered certain of the certificates to the Colonial Bank as security for advances, and certain others of them they pledged to the London Chartered Bank of Australia as security for a loan. The executors having discovered the frauds brought actions against the two banks to establish their title to the shares and to restrain the banks from dealing with the shares held by them respectively. A practice similar to that referred to by Mr. Justice Chitty prevailed with regard to the mode of dealing with the shares, and it was contended by the banks that having obtained the certificates in good faith and for value they were entitled to hold them as against the executors.

The House of Lords held, affirming the decision of the Court of Appeal, that the title of the executors could be defeated only upon the principle of estoppel, and that there was no estoppel on the facts of that case, because the possession of the certificates, indorsed as they were, was consistent either with their having been entrusted to the brokers to sell, or with their having passed into their hands in order to have the names of the executors entered in the register of the shareholders as owners

of the shares mentioned in the certificates: and that being so the banks were put upon inquiry as to which of these two purposes was that for which the brokers were entrusted with the certificates.

Lord Herschell and Lord Watson in their speeches expressed in clear and unambiguous language the opinion, that had the transfers been executed by Williams himself and the certificates sent by him to the brokers for safe custody, the brokers though acting fraudulently would have, nevertheless, been placed in a position to give a title to an honest purchaser which Williams could not dispute. As put by Lord Watson, delivery of the certificate with the transfer executed in blank by the registered owner passes, not the property of the shares, but a title, legal and equitable, which enables the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner; and again, Lord Watson said, "When the registered shareholder executes the transfer indorsed on his certificate, he can have only one intelligible purpose in view, that of passing on his right to a transferee."

In *Home v. Boyle, Low, Murray & Co.*, the view expressed by Lord Herschell and Lord Watson, to which I have referred, was adopted and given effect to by the Court of Appeal in Ireland, and it was recognized in *Waterhouse v. Bank of Ireland* as a correct statement of the law.

Mr. Justice Kekewich, however, in *Fox v. Martin*, declined to adopt this view of the law, which he thought was inconsistent with *France v. Clark*.

It is, I think, not impossible to reconcile *France v. Clark*, with the opinions of Lord Herschell and Lord Watson in *Colonial Bank v. Cady*. In *France v. Clark*, there was no evidence of a mercantile usage to the effect that holders of certificates of the shares which were in question in that case, indorsed with blank transfers signed by the registered owners, were treated as having the right to transfer the shares mentioned in the documents, as if they were the owners of the shares, and not only was there no evidence of such an usage, but, as the Lord Chancellor pointed out, the inference was for the reasons which he mentions, rather, that no such usage could be shown to exist. On the other hand, the basis on which the opinions of Lord Herschell aud Lord Watson rested was, that in the case with which they were dealing such a mercantile usage or recognized practice, as Mr. Justice Chitty calls it (which I take to mean the same thing), was proved to exist.

However this may be, the weight of judicial opinion and the reason of the thing appear to me to justify us in holding that the law is, as it is stated by Lord Herschell and Lord Wat-

son to be, and I am the more ready to so hold because the adoption of the opposite view would, in my judgment, seriously impede the rapid carrying on of a large branch of commercial business, to the successful carrying on of which in these modern days celerity of despatch in its transaction is essential.

The appeal should in my opinion be allowed with costs, and the action as against the defendants the Molsons Bank, be dismissed with costs.

MacMahon, J.—Daniels, in his work on Negotiable Instruments, 4th ed., designates such stock certificates as those in question here as *quasi* negotiable instruments, and says, section 1708 *g*: "Commercial corporations generally encourage the assignment of their shares, as their value is increased by the facility of transfer; and it is generally provided on the face of their certificates of stock by virtue of their charters, by-laws or regulations, that the shares 'are transferable on the books of the company, in person or by attorney, on the surrender of this certificate.' And on the back of the certificates there is generally a printed form of sale and assignment, with an irrevocable power of attorney in blank, authorizing the unnamed person to do all things requisite to perfect the transfer on the books of the corporation. When such formal assignment, and power of attorney in blank, is signed by the shareholder, and the certificate is delivered therewith, an apparent ownership in the shares represented is created in the holder. And the general principle sustained by the great weight of authority, as well as of reason, is that when the owner of a certificate of stock with such a power of attorney in blank thereon written, or thereunto attached, entrusts it to an agent with power to deal therewith, a *bona fide* purchaser for value without notice will be protected in his acquisition of the certificate, although the agent to whom it has been entrusted has diverted it from the purposes for which it was put in his charge, or has been guilty of a fraud or breach of trust in reference thereto. This doctrine does not rest upon the idea that the certificate of stock is a negotiable instrument; but upon the equitable principle that where a person confers upon another all the *indicia* of ownership of property, with comprehensive and apparently unlimited powers in reference thereto, he is estopped to assert title as against a third person, who, acting in good faith, acquires it for value from the apparent owner."

The statement as to the law in the United States enunciated in the text, is fully borne out by the case in the Supreme Court of the State of New York, of *The Commercial Bank of Buffalo v. Kortright*, and by the Supreme Court of Pennsylvania in *Wood's*

Appeal, *Wood v. Smith*, and in *Burton's Appeal*, and in a number of other cases decided by Courts in other States of the Union, referred to in Mr. Daniel's work.

The mode of transfer of these stock certificates, with blank endorsements, is the same both in England and the United States. The usual method of transfer in England is thus stated by Chitty, J., in *Colonial Bank v. Hepworth*: "According to a practice which has extensively prevailed, and has been recognized and acted upon by the company, the transferor signs the transfer and power of attorney without filling in the names of the transferee and attorney; and these blank transfers readily pass on the market from hand to hand by delivery only until the documents reach the hands of some holder who desires to be registered. His name is then filled in by himself or on his behalf. The documents are then left with the company, the certificates are cancelled, the transferee is registered, and new certificates in his name are issued in the manner already described.

"The plain legal effect of this recognized practice is, that the transferor who executes the transfer in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority. The holders must of course be *bona fide* holders for value without notice." See also the judgment of Lord Watson in *The Colonial Bank v. Cady*.

Therefore, once the owner of a share certificate signs a transfer and power of attorney in blank, the stock certificate may pass from hand to hand through any number of transferees, so that having regard to such practice the designation given to them by Daniels of *quasi* negotiable instruments is not inappropriate. And accordingly in the United States such certificates with a transfer in blank, signed by the holder and given to his broker to be dealt with by him, although the latter be guilty of fraud in dealing with it, the doctrine of estoppel being invoked, protects a *bona fide* purchaser or pledgee for value without notice of the fraud.

In England the estoppel created by the execution of such a blank transfer by the owner of stock has, in one instance, been described as a limited one. In the case already referred to, of *Colonial Bank v. Hepworth*, Chitty, J., said: "Estoppels cannot be manufactured arbitrarily; no estoppel can be raised on a document inconsistent with the terms of the document itself. What, then, is the estoppel here? Having regard to the practice proved and the condition in which these documents are when they pass from hand to hand, the right principle to adopt with reference to them is to hold that where (as is the case be-

fore me) the transfers are duly signed by the registered holders of the shares, each prior holder confers upon the *bona fide* holder for value of the certificates for the time being an authority to fill in the name of the transferee, and is estopped from denying such authority; and to this extent, and in this manner, but not further, is estopped from denying the title of such holder for the time being. By the delivery an inchoate legal title passes, but a title by unregistered transfer is not equivalent to what has been termed 'the legal estate' in the shares or to the complete dominion over them. Had the plaintiffs filled in their own names or the name of some nominee of their own in the blank transfers while in their possession, the case would have stood differently."

But Lord Watson in *The Colonial Bank v. Cady*, holds that the legal title passes under the circumstances stated by Chitty, J. He says: "The appellants' witnesses say that delivery of the certificates with the transfer executed in blank, 'passes the property' of the shares; but that statement must be accepted subject to the explanations by which it is qualified. * * "It would, therefore, be more accurate to say that such delivery passes, not the property of the shares, *but a title legal* and *equitable*, which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner." And that was what was held by Sir George Jessel, M.R., in *In re Tahiti Cotton Co., Ex p. Sargent.*

In *Colonial Bank v. Hepworth* the circumstances were peculiar. The stock had been bought in August and October, 1883, for the defendant, by Thomas & Co., who received the certificates from the persons from whom the shares were bought. The defendant allowed Thomas & Co. to retain the shares for the purpose of registration. In November, Thomas & Co., in fraud of the defendant, deposited the share certificates with the plaintiffs to secure the balance then due to them. The certificates had been executed by the person or firm in whose names the shares were registered as transferors; the name of the transferee and proposed attorney being in each case left in blank. On the 11th of December, Thomas & Co. obtained from the plaintiffs the certificates on the representation that they desired to send them for registration. When received, Thomas & Co. filled in the name of the defendant in the blank transfer forms, and the stock was registered in the books of the company in his name. Thomas & Co., when they handed the certificates to the company to be registered, obtained a receipt for the same, which they sent to the plaintiffs, which they retained until February, 1884, when, learning that a partner of Thomas & Co.

had absconded, they sent to the agents of the company the receipt and obtained the new certificates which had been issued in defendant's name.

The plaintiffs claimed a declaration that the shares were theirs. But it was held that the defendant was the legal owner, the share certificates being in his name, and being delivered to the Colonial Bank in error, and that the defendant was entitled to have such new certificates delivered to him.

Mr. Justice Chitty puts the position of the plaintiffs and the defendants respectively in regard to the certificates in this way:

"Had the plaintiffs filled in their own names or the name of some nominee of their own in the blank transfers while in their possession, the case would have stood differently; the defendant would not have been registered as the holder of the shares. As it is, the plaintiffs never had a present absolute unconditional right to register. Their inchoate title was liable to be defeated, and has been defeated by the defendant acquiring in good faith for value a complete legal title by transfer filled in with his name as transferee and by registration."

It is hardly necessary to refer to *Goodwin v. Robarts* and *Rumball v. The Metropolitan Bank*, which were cited during the argument, because in both of these cases the scrip certificates were held to be negotiable instruments.

In the *Goodwin* case the scrip was that of a foreign Government, and it was admitted by the special case submitted for the opinion of the Court that, by the custom of all stock exchanges in Europe, they were negotiable instruments and passed by mere delivery to a *bona fide* holder for value, and as English law follows the custom, any person taking it in good faith obtained a title to it independent of the title of the person from whom he took it.

The decision in *Rumball v. The Metropolitan Bank* followed the judgment in *Goodwin v. Robarts.*

The decision in the case in hand must, therefore, turn on whether *France v. Clark* is still a binding authority, or whether it has not virtually been reversed by *The Colonial Bank v. Cady.*

The head note to *In re Tahiti Cotton Co., Ex p. Sargent*, which sets out the facts sufficiently for our present purpose, states:

"Where the owner of shares borrows money and deposits with the lender certificates of his shares, and also transfers thereof signed by him, but with the date and name of the transferee left blank, the lender has implied power to fill up the blanks, and the transfers will pass the legal interest if the articles of the association do not require a deed; otherwise only an equitable interest."

That case was dissented from by the Court of Appeal in *France v. Clark*, in which a summary of the facts and an epitome of the judgment of the Court delivered by Lord Chancellor Selborne is contained in the following paragraph of the head note: "France, the registered holder of shares in a company, deposited the certificates with Clark as security for £150 and gave him a transfer signed by France, with the consideration, the date, and the name of the transferee left in blank. Clark deposited the certificates and the blank transfer with Quihampton as security for £250. Clark died insolvent, after which Quihampton filled in his own name as transferee, and sent in the transfer for registration. The shares were accordingly registered in Quihampton's name, but whether this was done before notice given by France to the company and to Quihampton that France denied the validity of the transfer, was doubtful on the evidence:

"*Held*, affirming the decision of Fry, J., that Quihampton had no title against France except to the extent of what was due from France to Clark."

Lord Selborne, in effect, said: "A person who, without inquiry, takes from another an instrument signed in blank by a third party, and fills up the blanks, cannot, even in the case of a negotiable instrument, claim the benefit of being a purchaser for value without notice, so as to acquire a greater right than the person from whom he himself received the instrument.

"If a debtor delivers to his creditor a blank transfer by way of security, that does not enable the creditor to delegate to another person authority to fill it up for purposes foreign to the original contract."

And the Lord Chancellor, referring to *In re Tahiti Cotton Co., Ex p. Sargent*, said:

"The case of *Ex p. Sargent* was upon an application to rectify the register of a company by substituting the name of Sargent for that of Fry, who, being the registered owner of certain shares, had signed a transfer in blank to Cannon, by way of security; and Cannon had transferred it in the same state to Sargent, who afterwards filled in his own name. Sargent does not appear to have claimed to stand as more than a transferee, with a right to get in the legal title, of such interest as Cannon had when he handed over the documents, and the Master of the Rolls relied upon the power of every mortgagee 'to reborrow and to transfer his security.' There were several communications between Fry and Sargent after the transfer, which may, perhaps, have been thought to amount to ratification; and the Master of the Rolls said that Mr. Fry's own counsel had admitted Sargent's equitable right to have the shares transferred to him, which admission, in his Lordship's judgment, covered the

legal right also. If the case is to be thus explained, it is not an authority in point on the present occasion; if not, we should not be prepared to follow it."

In that case Cannon had filled up the blank transfer with his own name and sent it to the company for registration, but Fry, being the chairman of the board of directors, induced the company not to register the transfer. Sir George Jessel said: "As I have already said, I hold there was authority to fill up the blanks over the signature of Mr. Fry, and therefore they were validly signed, and I think ought to have been registered." He, in effect, was holding that the legal title to the shares was in Cannon.

Williams v. Colonial Bank was before the House of Lords *sub nominee The Colonial Bank v. Cady*, the facts of which are set out with sufficient fullness in the head-note: "The registered owner of shares in a New York company held certificates which stated that the shares were held by him and were transferable in person or by attorney on the books of the company only on the surrender and cancellation of the certificate by an indorsement thereof. The indorsement was in the form of a transfer for value received, blank in the names of the transferor and transferee, with a power of attorney in blank to carry out the transfer. On the death of the owner his executors obtained probate of his will, and in order that the shares might be registered in their own names, signed as executors the transfers on the back of each certificate, without filling up the blanks, and sent the certificates to their broker, who fraudulently deposited the certificates with a bank, which took them *bona fide* and without notice as security for advances. The bank retained the certificates and took no steps to obtain registration. By the law of New York such a delivery of signed transfers by the registered owner of shares would estop him from setting up his title against a purchaser for value without notice. But neither on the New York nor on the London Stock Exchange are transfers so signed by executors treated as being in order, or received as sufficient security for advances, unless duly authenticated."

The House of Lords was unanimous in affirming the judgment of the Court of Appeal on the points decided by the Lords Justices, namely, that the particular documents in question were not negotiable instruments; and that the executors were not estopped by what they had done in signing the transfers in blank, nor by having left the documents with the brokers for a considerable time, from denying the title of the Colonial Bank.

In that case the share certificates were in the name of the original owner of the stock, J. M. Williams, while the transfers endorsed on the certificates were signed by the executors and

without being duly authenticated by a consul, were "not in order" for registration in the books of the company, and, therefore, business men would not take them without enquiry. The defect existing in the documents was one which should have put the Colonial Bank on enquiry before accepting the certificates.

Lord Chancellor Halsbury, in his judgment, said: "It is admitted that the shares (or to speak more accurately the share certificates) are not negotiable instruments, and the executors being informed that in order to get themselves registered in the books of the company they must sign their names at the end of the document, acted upon that assurance, and, as I have said, entrusted the possession of the share certificates (never intending to part with the property in them) to Blakeway. Blakeway was a stock broker in London, and the transaction of loan took place in London; but the shares in question are shares in a corporation established in New York and subject to the laws of that State."

Lord Watson's observations, coupled with those of Lord Herschell, from whose judgment I shall presently quote, are of the utmost import in dealing with the case in hand. Lord Watson says: "In so far as the law of America is concerned, your Lordships have the aid of three experts, two of whom were examined by the appellants and one by the respondents. As I understand their evidence, the principles of American law do not differ in any way, or at least in any material respect, from those by which an English Court would be guided in similar circumstances. When the endorsed transfer has been duly executed by the registered owner of the shares, the name of the transferee being left blank, delivery of the certificate in that condition by him, or by his authority, transmits his title to the shares both legal and equitable. The person to whom it is delivered can effectually transfer his interest by handing his certificate to another, and the document may thus pass from hand to hand until it comes into the possession of a holder who thinks fit to insert his own name as transferee, and to present the document to the company for the purpose of having his name entered in the register of shareholders and obtaining a new certificate in his own favour."

And again he says: "Whether the respondents are estopped from saying that Blakeway had not their authority to dispose of the certificates in question is, in my opinion, the sole question presented for decision in these appeals. Had the transfers been executed by John Michael Williams, and the certificates thereafter sent by him to Thomas, Sons & Co. for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was nevertheless placed by his act in a position to give a title to an honest purchaser which his

employer could not dispute. But that is not the case with which we have to deal. The transfer was signed by the respondents, who were not the registered owners of the shares and were not named in the certificate. Whatever may be the effect of an instrument so executed, one thing is clear, that it cannot be regarded as, either in law or by custom, equivalent to a certificate and transfer executed by the registered owner himself."

And, " When the registered shareholder executes the transfer indorsed on his certificate, he can have only one intelligible purpose in view, that of passing on his right to a transferee. It is not so in the case of an executor, whose only title to the shares is by legal assignment to the interest of the defunct."

Lord Herschell says: " The evidence of the American lawyers, however, makes it equally clear that such certificates of shares are not in the United States, any more than in England, negotiable instruments. The mere delivery of them with the indorsed blank transfer and power of attorney signed, irrespective of any act or intent on the part of the owner of the shares, is not of itself sufficient to pass the title to them. If delivered by or with the authority of the owner with intent to transfer them, such delivery will suffice for the purpose. But if there has been no intent on the part of the owner to transfer them, a good title can only be obtained as against him if he has so acted as to preclude himself from setting up a claim to them. If the owner of a chose in action clothes a third party with the apparent ownership and right of disposition of it, he is estopped from asserting his title as against a person to whom such third party has disposed of it, and who received it in good faith and for value. And this doctrine has been held by the Court of Appeals of the State of New York to be applicable to the case of certificates of shares, with the blank transfer and power of attorney signed by the registered owner, handed by him to a broker who fraudulently or in excess of his authority sells or pledges them. The banks or other persons taking them for value, without notice, have been declared entitled to hold them as against the owner.

" As at present advised, I do not see any difference between the law of the State of New York and the law of England in this respect. If in the present case the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the banks had obtained a good title as against him, and that he was estopped by his act from asserting any right to them. But this is not the case with which your Lordships have to deal. The transfers in this case were not signed by the registered owner, John Michael Williams, but by his executors. If they had been so signed and delivered by the executors for the purpose of effecting a

transfer, I see no reason to doubt that such a delivery would have been effectual for that purpose. But they were not. * * *

"The case seems to me to differ essentially from that of a transfer signed by the registered owner. He must, presumably, have signed it with the intention at some time or other of effecting a transfer. No other reasonable construction can be put on his act. And if he entrusts it in that condition to a third party, I think those dealing with such third party have a right to assume that he has authority to complete a transfer. But when the indorsement is signed by executors who are not the registered owners, there can be no such presumption. They may well have signed it merely to complete their title without the intention of ever parting with the shares."

In *Fox v. Martin*, the plaintiff, the registered owner of shares in a limited company, instructed a broker to sell the same, and for that purpose delivered to him the share certificate and a blank transfer signed by the plaintiff. The broker improperly deposited the blank transfer and certificate with the defendant as security for his own debt. The defendant afterwards filled up the blank transfer with the date, consideration, and name of transferee, and sent it for registration to the office of the company, where it lay for more than a fortnight without being registered. The plaintiff brought his action to restrain registration and establish his right to the shares.

Kekewich, J., held, following *France v. Clark*, that the defendant had acquired no title to the shares as against the plaintiff; and assigned as a reason for not following *The Colonial Bank v. Cady*, that although there were expressions of opinion by the Lords inconsistent with *France v. Clark*, he considered that case as not being expressly overruled by it.

According to *France v. Clark*, and *Fox v. Martin*, where any owner of a share certificate executes a transfer in blank and hands it to his broker, the fact that such transfer is in blank affects an intending purchaser or pledgee with notice and puts him on enquiry as to the extent of the broker's authority.

France v. Clark was referred to by the appellants in *The Colonial Bank v. Cady*, and although it is not expressly mentioned in any of the judgments of the Lords, it is impossible that it should not have been considered. For it must not be lost sight of that these opinions of Lords Watson and Herschell were expressed, although when the case then being considered was before the Court of Appeal, Lords Justices Cotton and Lindley had delivered opinions in consonance with that of Lord Chancellor Selborne in *France v. Clark*, and the judgments of Lords Watson and Herschell deal with the very point upon which the decision in *France v. Clark* hinged; and what they enunciate as being the law is the very converse of that laid

down in *France v. Clark* and *Fox v. Martin.* For as already pointed out, Lord Watson says: "Had the transfers been executed by John Michael Williams, and the certificates thereafter sent by him to Thomas, Sons & Co. for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was nevertheless placed by his act in a position to give a title to an honest purchaser which his employer could not dispute." And Lord Herschell said: "If in the present case the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the banks had obtained a good title as against him, and that he was estopped by his act from asserting any right to them."

In *France v. Clark* and *Fox v. Martin*, according to Lords Watson and Herschell, the transferees of the share certificates in each of those cases would have a title by estoppel, and that is what was held by Sir George Jessel, M.R., in *In re Tahiti Cotton Co., Ex p. Sargent*, the judgment in which was dissented from in *France v. Clark.*

The above short excerpts from the judgments of Lords Watson and Herschell, in *The Colonial Bank v. Cady*, are referred to in the judgment of North, J., in *Bentinck v. London Joint Stock Bank*, as illustrating what he regards as the settled law for his guidance in dealing with the case then before him for decision. And these extracts also appear in the judgment of FitzGibbon, L.J., in the Court of Appeal, Ireland, in *Hone v. Boyle*, who follows the opinions expressed therein, saying at p. 169 of his judgment, "The so-called 'estoppel' is the equitable effect of leaving a person in the possession of the symbols of property, or of the *indicia* of rights affecting property; and these certificates, as between mesne holders, are the absolute *indicia* of an uncontrolled right and power of obtaining a transfer of the shares which they represent." And Barry, L.J., in the same case put the question for consideration concisely: "The question here is not whether these certificates are 'negotiable,' but whether their delivery to a *bona fide* taker for value (like the defendant here), does not confer upon such taker a right to retain them against the registered proprietor, or any person claiming through him. Now, for a long time there has prevailed on the Stock Exchange, not alone of America, but of England, and, I believe, of other European countries, a usage of passing such certificates by delivery from hand to hand in sale or pledge; and it is laid down by the highest authority that where a certificate of such shares as we are dealing with is duly delivered in the form and manner prescribed by the usage, the endorsed transfer having been executed by the registered owner in blank, such delivery will confer on the deliveree for value and without notice, not the

property in the shares, but a right to have his name entered by the company on the register of shareholders, and thus constitute himself the legal owner of the shares; and as a necessary consequence such holder of the certificate is entitled to retain it against any person claiming title from the registered owner."

So also in *Waterhouse v. Bank of Ireland*, Chatterton, V.C., refers to these opinions of Lords Watson and Herschell, and recognizes them as authorities by which he is bound.

I do not think we are concerned with *Earl of Sheffield v. The London Joint Stock Bank*, because the facts disclosed in that case showed that the banks in dealing with one Mozley, a money-lender, either actually knew, or had reason to believe, that the securities deposited with the banks as security for large running accounts might not belong to Mozley, but to his customers.

There was great misapprehension as to the effect of the decision in that case, and Lord Chancellor Halsbury, who took part in the judgment of the House, explained its effect in *London Joint Stock Bank v. Simmons*, where he says: "The inferences derived from the business carried on by the money-lender in *Lord Sheffield's* case, were peculiar to that case, and have no relation to the course of business which brokers habitually pursue towards their own clients, and for their own clients, when dealing with bankers with whom they deposit securities. The deposit of securities as 'cover' in a broker's business is as well-known a course of dealing as anything can possibly be, and the phrase that they are deposited *en bloc* seems to me to be somewhat fallacious. That they are, in fact, deposited by the broker at one time, and to raise one sum, may be true. It does not follow, and I do not know, that the banker could reasonably be expected to presume that they belonged to different customers, and that the limit of the broker's authority was applied to each individual security by his own client. It would, therefore, to my mind, be as totally different from the facts proved or inferred in *Lord Sheffield's* case as anything could well be.

"I do not think that in that case any countenance was given to the notion that because Mozley, the money-lender, was assumed to be the agent for the owners of the property, that circumstances alone put the bank upon inquiry as to his title to the property with which he dealt. To lay down as a broad proposition that in every case you must inquire whether a known agent has the authority of his principal, would undoubtedly be a startling proposition, and certainly nothing said in *Lord Sheffield's* case could justify so novel an idea."

Rogers and Hubbell were reputable stock brokers. Hubbell possessed the confidence of the plaintiff, otherwise it is not

reasonable to suppose she would have executed transfers of these stock certificates in blank and entrusted him with them.

According to the plaintiff's statement she signed the transfer on the Commercial Cable certificate, and delivered it to Hubbell with the intention of parting with her property in it. And Falconbridge, J., has found that she signed the transfer of the Montreal Street Railway shares, and, as said by Lord Watson, "When a registered shareholder does that he can have only one intelligible purpose in view, that of passing on his right to a transferee." And that is the effect of what is said by Lord Herschell in the above short extract from his judgment.

Some observations of FitzGibbon, L.J., in *Hone v. Boyle*, are so apposite as to the dealings between Rogers and Hubbell and the Molsons Bank in this case, and by which the latter acquired the stock certificates, that I extract them. He said: "There is no illegality nor startling improbability in a stock-broker's being possessed of securities of his own. But further, not only is there no improbability in a stock-broker's being authorized to pledge securities for his customers, but there is a body of proof that such transactions are of every-day occurrence, and the House of Lords in *Lord Sheffield's* case has treated it as 'part of the ordinary course of a banker's business' to make advances to money-lenders on pledge of the securities of individuals to whom the pledgers are to lend in turn. A large department of banking business must cease if the mere fact that the holder of securities is a broker puts the banker upon inquiry or subjects him to the burden of proving the broker's authority to pledge. At best this 'putting on inquiry' is only a half-hearted conclusion. If the question, 'Are these shares yours?' or, 'Have you authority to pledge them?' were held to suffice, the answer 'Yes' would add little or nothing to the representation *ipso facto* made by the request for the advance, and the offer to deposit the securities." See also the judgment of Lord Chancellor Halsbury in *The London Joint Stock Bank v. Simmons*.

Hubbell, without any enquiry being made as to the ownership of the Commercial Cable stock, represented to Mr. Brodrick that he had purchased it. In a bank's dealings with a broker who is obtaining an advance on a deposit of securities, where the registered owner of stock signs a transfer and power of attorney in blank and hands it to a reputable stock-broker, what is there in such a transaction to put a banker on enquiry? From whom would he enquire, and what would be the form of the enquiry? The enquiry would be made from the person pledging the securities, and as to one of the securities the bank had Hubbell's statement that he was the owner. If enquiry

was necessary and had been made as to the other, we may well infer that the representation as to that would have been the same.

The only evidence as to custom was that given by Mr. Brodrick, furnished by his experience as a banker. And where we have the universal custom detailed as to the mode of transfer of such securities both in England and the United States, in *Colonial Bank v. Hepworth*, and *Colonial Bank v. Cady*, which accords with Mr. Brodrick's evidence, we may conclude that the custom in Canada does not differ with that of bankers in Great Britain and the States. In *The Colonial Bank v. Cady*, five officials of London banks were examined by the appellants as to the custom by banks in dealing with transfers of such certificates.

I have not considered the question as to the effect of the bank having taken a separate assignment from Hubbell by hypothecating the certificates when the advances were made, as I consider on the authorities the bank is entitled to retain the shares as against the plaintiff. But one observation may be made as to the hypothecation sheet pledging the Commercial Cable stock. It pledged two shares of the same stock standing in the name of V. C. Nicholson, which had been purchased by Rogers and Hubbell, and which the bank sold on the 3rd of August, three months after it had been pledged.

The appeal will, therefore, be allowed with costs, and judgment directed to be entered for the defendants the Molsons Bank, dismissing the action as against it with costs.

Rose, J.—The opinions of the other members of the Court are so full that I content myself with expressing my concurrence in the result reached by them, that the appeal must be allowed.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

	1898		1899	
Quarter ending 30th September.				
Free	$16,531		$17,223	
Dutiable	24,549		26,476	
	$ 41,080		$ 43,699	
Bullion and Coin	3,110	$ 44,190	4,019	$ 47,718
Month of October—				
Free	$ 4,805		$ 5,646	
Dutiable	6,426		8,778	
	$11,231		$14,424	
Bullion and Coin	498	$11,729	134	$14,558
Total for four months		$55,919		$62,275

EXPORTS

Quarter ending 30th September—				
Products of the mine	$ 2,980		$ 3,645	
" Fisheries	2,384		2,512	
" Forest	12,767		12,948	
Animals and their produce	12,068		17,503	
Agricultural produce	4,076		4,298	
Manufactures	2,600		3,016	
Miscellaneous	49		72	
	$ 36,925		$ 43,995	
Bullion and Coin	373	$ 37,298	601	$ 44,596
Month of October				
Products of the mine	$ 1,413		$ 750	
" Fisheries	1,917		1,880	
" Forest	3,399		3,410	
Animals and their produce	5,959		6,062	
Agricultural produce	2,372		3,442	
Manufactures	820		1,100	
Miscellaneous	18		42	
	$15,899		$16,686	
Bullion and Coin	1,454	$17,353	148	$16,834
Total for four months		$54,651		$61,430

SUMMARY (in dollars)

For four months—		1898		1899
Total exports other than bullion and coin		$ 52,311,000		$60,681,000
Total imports other than bullion and coin		52,824,000		58,143,000
Excess	*Imp.*	$ 513,000	*Exp.*	$2,538,000
Net imports of bullion and coin		1,781,000		3,404,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of September, October and November 1899, and comparison with November, 1898:

LIABILITIES

	30th Sept., 1899	31st Oct., 1899	30th Nov., 1899	30th Nov., 1898
Capital authorized	$76,808,664	$ 76,808,664	$ 76,108,664	$ 76,508,684
Capital paid up	64,183,377	64,327,636	63,365.431	63,170,293
Reserve Fund	29,591,769	29,630,785	29,531,762	27,694.310
Notes in circulation	$ 46,682,028	$ 49,588,236	47,839,506	$ 42,350,948
Dominion and Provincial Government deposits	6,221 662	6,277,471	5,225,266	4,967,694
Public deposits on demand	97,068,793	100,799,465	101,437.399	89,468,722
Public deposits after notice	170,293,952	172,037,773	174,437,445	156,534,264
Bank loans or deposits from other banks secured	429,017	706,090	566,935	....
Bank loans or deposits from other banks unsecured	4,512,940	3,950,800	4 255,551	3,605,693
Due other banks in Canada in daily exchanges	201,817	190,534	179,794	98,209
Due other banks in foreign countries	892,526	1,390,716	1,126,823	1,450,174
Due other banks in Great Britain	5,194.829	5,927,798	4,749,895	2,248,728
Other liabilities	411,242	417,056	1,023,132	985.376
Total liabilities	331,908,896	341,286,017	340,841,820	$301,709,875

ASSETS

Specie	$9,263 464	$ 9,194,944	$ 9,153,391	$ 9,086,993
Dominion notes	18,335,535	18 666,887	18,593,777	17.326,092
Deposits to secure note circulation	2,092,763	2,071,443	2,056,344	1,989,523
Notes and cheques of other banks	10,240,936	12,400,827	11,712,172	10,865,445
Loans to other banks secured	461,610	616,645	429,886	....
Deposits made with other banks	5,232,044	4,720,341	5,259,584	4,432.289
Due from other banks in Canada in daily exchanges	312,115	296,724	297,193	198,814
Due from other banks in foreign countries	29,408,462	28,067,780	27,118,605	23,929,718
Due from other banks in Great Britain	12,488,825	13,521,740	13,533,511	14,287,430
Dominion Government debentures or stock	4.901,401	4,893,727	4,782,800	5,070,283
Public, municipal and railway securities	30,435,285	31,631,862	31,457,133	34,382,101
Call loans on bonds and stocks	33,157,178	34 654,363	34,317,790	24,963,993
Current loans and discounts	254,433,667	259,848,951	263,597,683	229,261,061
Loans to Dominion and Provincial Governments	1,827,436	2,297,142	1,852,167	2,291,163
Overdue debts	2,342,824	2,450,463	1,943,325	2,438,170
Real estate	1,687,658	1,728,443	1,190,417	1,951,674
Mortgages on real estate sold	625,126	628,753	666,009	594,895
Bank premises	6,225,058	6.244,311	5,950,326	5,895,464
Other assets	4,417,400	3,851,503	3,694,399	2,818,046
Total assets	427,888,875	437,787,044	437,606,702	$391,783,455
Loans to directors or their firms	7,344,033	7,355,011	7,020,135	$7,663,040
Average amount of specie held during the month	9,350,912	9,344,411	9,014,089	9,152,211
Average Dominion notes held during the month	18,428,904	18,295,885	18,520,221	16,795,045
Greatest amount of notes in circulation during month	47,131,046	50,454,221	50,845,199	44,024,625

Monthly Totals of Bank Clearings at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

	Montreal		Toronto		Halifax		Hamilton	
	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9
	$	$	$	$	$	$	$	$
December	56,509	69,143	35,986	43,508	5,386	5,838	3,094	3,334
January ..	60,334	64,850	37,836	42,388	5,009	5,913	3,028	3,274
February .	62,332	62,432	33,414	40,818	4,446	4,583	2,663	2,807
March ...	62,043	69,610	39,012	40,646	5,285	4,838	3,021	3,122
April	50,003	61,249	33,035	39,182	4,472	5,209	2,858	3,304
May	56,475	71,777	34,374	44,349	4,798	5,602	2,932	3,513
June	59,471	63,756	36,960	41,189	4,997	5,461	3,001	3,224
July......	60,423	63,209	35,727	40,569	5,851	4,742	3,117	3,304
August ..	55,578	63,115	32,390	37,207	5,551	7,823	2,655	3,138
September	61,856	64,163	33,932	39,842	4,919	5,937	2,773	3,590
October ..	66,354	69,792	38,349	46,979	5,408	6,795	3,103	3,608
November	67,246	71,101	39,125	44,637	5,154	6,645	3 147	3,680
	718,624	794,197	430,140	501,314	61,276	68,386	35,392	39,898

	Winnipeg		St. John		Vancouver	Victoria
	1897-8	1898-9	1897-8	1898-9	1898-9	1898-9
	$	$	$	$	$	$
December	9,784	10,708	2,738	2,746	3,058	2,433
January ..	6,347	7,683	2,417	2,470	2,441	2,544
February .	5,517	6,209	2,022	2,212	2,099	2,849
March ...	5,968	6,756	2,148	2,391	2,818	2,689
April	6,240	6,916	2,254	2,494	3,024	2,848
May	8,683	7,472	2,513	2,910	2,784	2,700
June	7,397	8,211	2,592	2,606	3,768	2,509
July......	6,316	8,169	2,927	2,753	3,355	3,087
August ..	6,180	7,995	2,059	3,103	4,929	3,039
September	6,414	8,281	2,508	3,004	4,513	3,024
October ..	9,347	12,689	2,498	2,814	4,751	3,059
November	11,553	14,435	2,660	2,903	3,785	2,588
	90,746	105,524	29,336	32,406	41,325	33,369

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THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE*

I. EARLY METALLIC CURRENCY AND ITS REGULATION

HAVING undertaken to contribute a further series of articles on the history of Canadian Banking, I have found it necessary to an intelligent treatment of the subject, to take into consideration the closely allied and interdependent fields of the currency and exchange of the country. To accomplish this it is necessary to trace, up to our new point of departure in 1825, the various attempts to regulate the metallic currency of the colony, which were only incidentally referred to in the first

*Chief sources:

Ordinances made for the Province of Quebec by the Governor and Council of the said province, since the establishment of the Civil Government. Quebec, 1767.

The Laws of Lower Canada. Vols. I—IV.

Statutes of Upper Canada, as published in 1812, 1819, 1823.

Dominion Archives, State Papers, Lower and Upper Canada.

A History of Currency in the British Colonies by Robert Chalmers, B.A., of Her Majesty's Treasury. With Appendix of Documents. London, 1893.

Letter Books of the Hon. Richard Cartwright. 1787-1815. In manuscript.

series of studies dealing with the preparation for the earliest banks and their actual establishment. To supply this missing link is the object of the present article.

We have already followed the history of the introduction and valuation of the various coins current in Canada during the French period. Driven to cover, during the closing years of French rule, by an overwhelming invasion of paper money, these coins reappeared at the Conquest, and took their places as media of exchange along with the coins introduced by the purveyors for the British troops, or brought by the British and colonial merchants who established themselves at Quebec and Montreal. The Quebec merchants long continued to be closely in touch with Britain and the eastern colonies of Nova Scotia and Massachusetts. The Montreal merchants, being almost entirely from the colony of New York, continued to maintain a close connection and intercourse with that colony by way of the Lake Champlain and Richelieu River route. In accordance with these influences, the standards of exchange introduced into Canada were determined by the colonial affinities of the merchants carrying on the Canadian trade.

On account of the long and intimate connection of the North American colonies with the West Indian trade, the Spanish dollar and its associates of a similar grade had come to be the money standard of the colonies.

It has been the general experience of all new countries with unlimited resources and an eager and enterprising people, but with little capital, that a constant need for the necessaries of life and the means of development has led to a steady export of all that could procure the needed means for expansion. But nothing is easier to send abroad, and at the same time so certain of a ready market, as metallic money. Thus a chronic scarcity of money was the burden of complaint in all the American colonies.

Without understanding the significance of the facts, each colony adopted such measures as suggested themselves for attracting and retaining as much money as possible. The expedient which chiefly appealed to men of common sense but without special knowledge, was naturally that of putting a premium upon the coins most desired. If one colony rated the

dollar at 5s. while another rated it at 6s., it appeared as plain as a pike staff to the ordinary colonist, that a majority of the dollars would gravitate to the latter colony. Only a minority, relying on what seemed to the common-sense man over refined and unpractical argument, perversely declared that this plan was quite futile. Plain, unsophisticated argument prevailed, as it usually does in such cases, and the colonies engaged in a lively competition, partly with outsiders, but largely among themselves, for an increased share of the available currency. Before the close of the seventeenth century the "piece of eight," afterwards called the dollar, was variously rated in the American colonies from 4s. 6d. to 7s., and many and bitter became the complaints of the colonies to the mother country against one another and the intercolonial traders.

Massachusetts, being the older and more important of the English colonies, was usually the pioneer in new colonial movements. This was no less true in the field of currency than elsewhere, though her example was frequently improved upon in the following of it. On the 13th of October, 1697, the General Assembly of Massachusetts legalized the customary rating of the piece of eight or Spanish dollar of 17 dwt. at 6s. This Act was authorized by the Home Government, and afforded a basis for a general regulation of the colonial currency which shortly afterwards became necessary.

The Imperial Government found it impossible to ignore the growing clamour from America for its interference to abolish the existing confusion in the trade of the colonies with each other and the home country, owing to the varying and uncertain ratings of the coins in circulation. The Board of Trade, after considering the matter carefully, advised the Crown-in-Council, and a royal proclamation was issued by Queen Anne, on 18th June, 1704, which was to be sent to the governors of the various colonies and by them to be strictly enforced. Following the Massachusetts rating of 1697 this proclamation fixed the maximum colonial valuation of the piece of eight at 6s.: and prescribed that the other silver coins in circulation, the half, quarter and others, should be rated in proportion.

A careful assay at the British mint, of the various standard types of the Spanish dollar, had determined its average value in

sterling money to be 4s. 6d. The colonial rating, therefore, represented an increase of one-third on its sterling value, or the colonial rating stood to the sterling rating as 4 to 3. This, it may be remembered, was just the proportion in which the standard French coins had been overrated when sent to Canada and the other French American colonies.

The rating fixed by the proclamation of Queen Anne determined what was known as "proclamation money." However, the proclamation itself was very generally disregarded by the colonial merchants. Even had they the inclination, they certainly had not the power to suddenly alter the general exchange habits into which the people had fallen. Further, the impediments to natural and profitable trade, which were involved in the carrying out of the various statutes constituting the navigation laws and the colonial commercial system generally, had led to their systematic violation where needful, frequently high officials conveniently nodding, and had weakened the respect for British laws and proclamations regulating colonial trade.

To enable the Government to enforce more definitely the terms of the proclamation, it was shortly afterwards embodied in an act of the Imperial Parliament (6th Anne, cap. 57, 1707), which provided severe penalties for its infringement. Even then the colonies found ways and means for the evasion of the law. As nothing had been stated with reference to the gold coins, most of the West Indian colonies passed over to a gold standard, in which the Portuguese Johannes, commonly known as the "joe," and its half, chiefly figured. The northern colonies found refuge in paper currencies, and fluctuations in the media of exchange increased rather than diminished. In 1740 and 1741 efforts were made to remedy these evils, but nothing definite was the outcome. In 1750 an Imperial act prohibited the issue of paper currencies in several colonies, and in 1764 this prohibition was extended to all the American colonies. In 1773 the prohibition was somewhat relaxed, by permitting colonial paper currency, voluntarily accepted by the creditors of the colony, to be offered as legal tender at the colonial treasury in payment of taxes.

We observe, then, that the rating for silver coins established by the proclamation of Queen Anne of 1704, was

still in force at the time of the Conquest. The unit was the Spanish dollar, the sterling value of which was 4s. 6d., but allowed to be rated as high as 6s. in the colonies. Gold coins, however, had received no special rating. At the time of the Conquest the dollar was rated in Massachusetts and Nova Scotia, among other colonies, at 5s., whereas in New York it was rated at 7s. 6d. and not long afterwards at 8s. Both these standards were introduced by the merchants coming to Canada. There was also uncertainty as to the rating of the French and other coins already in the colony. Thus Governor Murray found it necessary to pass an ordinance, soon after the treaty of peace, establishing the legal tender rating of the chief coins circulating in the country.

This was the ordinance, passed 14th September and published 4th October, 1764, "for regulating and establishing the currency of the Province." It will be observed that it proceeds upon the legal ground of the proclamation and act of Queen Anne, having as its basis the rating of the dollar at 6s. The preamble states that "it is highly necessary to fix a certain value upon every species of coin now in this colony upon one certain and uniform plan." After considering the currencies of the various colonies upon the continent, the following ratings are established:

Coins	Weight		Rating		
Gold	dwt.	grs.	£	s.	d.
Johannes of Portugal	18	6	4	16	0
Moydore	6	18	1	16	0
Carolin of Germany	5	17	1	10	0
Guinea	5	4	1	8	0
Louis D'Or	5	3	1	8	0
Spanish or French Pistole	4	4	1	1	0
Silver					
Seville, Mexican and Pillar dollar	17	12		6	0
French Crown, or six Livre piece	19	4		6	8
French piece, passing at present for 4s. 6d. Halifax currency	15	16		5	6
British shilling				1	4
Pistereen				1	2
French nine-penny piece				1	0
Twenty British coppers				1	0

All higher or lower denominations of the said gold and silver coins were to be current in due proportions. After January 1st, 1765, these coins were to be legal tender according to these rates where there was no special agreement to the contrary.

Further, in all agreements prior to, or since the Conquest, which have been made in livres according to the method formerly in use, the livre shall be estimated equal to 1s. of the currency established by this ordinance, the dollar being the equivalent of 6 livres, and in the same proportion for every other coin.

This clause had the very practical advantage of bringing the customary French currency of the colony into easy relation with the currency of the English colonies, by making the livre equivalent to the shilling. Both of them, however, were now merely nominal standards, or money of account, there being no actual coins representing either the shilling or the livre as here determined. According to this arrangement a Spanish dollar would pay 6 livres of an outstanding Canadian debt, but a French crown, which was a 6-livre piece in French currency, would now pay $6\frac{3}{4}$ livres of debt. The remainder of the ordinance throws light upon some other phases of the currency situation at the time. The scarcity of small change was frequently met by the practice, referred to in the ordinance, of cutting up the dollar coins and passing the fragments as small change at an arbitrary value. As this facilitated fraud it was ordained that no such cut money should be allowed to pass current by way of change in any part of the Province, and penalties were appointed for infringement of this clause.

I have already referred to the different currency standards employed by the merchants of Quebec and Montreal, the former taking the Halifax, which was also the Boston standard, and the latter the New York standard. The existence of these different standards in the country explains the concluding portion of the ordinance. To prevent the introduction of copper in such quantity as to drain the country of gold and silver, it is ordained that all sols marquez, whether old or new, shall pass only as farthings. From the publication of the ordinance to the first of January next (1765) 48 sols were to be deemed equal to 1s. Halifax currency, and 36 sols equal to 1s. York currency. But from and after the 1st of January 48 sols should be equal to 1s. currency of this Province. No one, however, should be required to take sols for more than 1s. at one payment. In this ordinance the gold coins are somewhat under-rated

as compared with the silver coins, as was the case in most of the North American colonies, hence little gold remained in circulation.

It may be observed as a general principle in considering the fluctuating rates of the coins current in America, that though a uniform scaling up or down of the currency has little effect either in retaining it in the colony or driving it out, yet an unequal rating of the coins, as compared with their intrinsic value, will have the inevitable effect of driving the under-rated coins out of the country, while retaining the over-rated ones in it, this being only a special application of Gresham's law.

The merchants of Canada evidently paid no more attention to the requirements of this ordinance than suited their convenience. Though it was undoubtedly of value as affording a definite basis for legal settlement in cases of dispute, yet in the normal course of business the merchants continued to follow the usages to which they had been long accustomed.

Finding this to be the case, a further ordinance was passed on the 15th of May, 1765. By this the settlement of every form of commercial obligation entered into before the coming into force of the ordinance of 1764 was made legal if according to the scale of values stated in that ordinance. But the new ordinance went much further, containing the following very drastic clause: "That all original entries in books of accounts, and all accounts whatsoever for goods and merchandises, or other things sold and delivered, agreements, bills (bills of exchange only excepted), promissory notes, bonds, mortgages, and other securities for money, leases, and all interests and rents thereby reserved, kept, made and entered into, after the said first day of July next, in any other currency than the said currency by the said ordinance established, contrary to the true meaning thereof and of the said ordinance, shall not be admitted as evidence in any court of Law or Equity in this Province, but shall be deemed, adjudged and taken, and are hereby respectively declared to be null and void to all intents and purposes whatsoever."

Considering the conditions under which business had been carried on in the American colonies, this stringent regulation was not only a great injustice to the merchants, but simply

impossible of enforcement. The simple prescribing of such regulations proved the failure of Governor Murray to appreciate the economic conditions of the colony. This was one of the grounds of his great unpopularity with the merchants in both Britain and Canada, who, through their petitions, finally secured his recall.

In 1768 this objectionable clause in the ordinance of 1765 was repealed, with the following observations as to its effects. It has been found by experience that this clause "does not answer the purpose for which it was intended, but hath occasioned diverse difficulties and inconveniences in the recovery of just debts in the Courts of Justice in this Province, and is thereby likely to become the means of much fraud and injustice if it be suffered to continue in force." As a consequence of this experience we find that future governors were less rash in attempting to ride roughshod over the usages of trade and commerce as worked out in contact with the practical conditions of the time.

In the interval between the passing of the ordinance of 1765 and its repeal in 1768 we find that Murray, just as he was leaving Quebec on the 28th June, 1766, received instructions with reference to the currency, among other matters, upon which he was unable to take any action. Pending the arrival of Murray's successor, Sir Guy Carleton, President Irving of the Council took over the government. Apparently in accordance with the instructions sent to Murray, he immediately prepared in Council the draft of an ordinance for the regulating and establishing of the currency of the Province to take the place of the two ordinances then in force.

This draft specifically refers to the Act of Queen Anne, and reciting the clause limiting the piece of eight to 6s. currency, adopts that rating as the standard, and adjusts the other gold and silver coins as nearly as may be in proportion. In the list of rates given the only changes from the ordinance of 1764 are the raising of the weight of the standard Johannes to 18 dwt. 17 grs., increasing the value of the Spanish or French pistole from £1 1s. to £1 2s., and dropping from the list the French silver pieces other than the crown, and the British coppers. In place of the objectionable ordinance of 1765 a clause was intro-

duced simply making the coins as rated in the ordinance legal tender for all debts and contracts, past or future, made within the Province, except where there is a special written or witnessed agreement to the contrary. The value of the copper currency was rated at 18 British copper half pence, 36 farthings, or 48 sols marquez to be the equivalent of 1s. currency, the limit of legal tender in copper coins at one payment to be 5s. This proposed ordinance was dated 7th July, 1766, and in sending it to the British authorities, Irving explained in an accompanying letter that the louis d'or and the French crowns were somewhat over-rated with the object of keeping these coins in the country, which was very necessary owing to the scarcity of currency, and had hitherto proved effectual. In the same letter the President requests that a quantity of small currency be sent to the Province.

The Home Government, however, seems to have thought it better to leave the currency question, among others, where it was until the new governor should arrive. As we have seen, Carleton simply repealed the objectionable clause of the ordinance of 1765, but otherwise left the regulations as they were.

While there was considerable anxiety to have some of the ratings changed, yet there was no harmony of opinion as between the Quebec and Montreal merchants as to what the new standard should be. On August 31st, 1767, we find that several merchants of Quebec presented a petition to the Council praying that the currency of the Province might be changed to that of Nova Scotia. But the Council deferred action on the matter until they should learn the views of the Montreal merchants on the subject. The result was that the matter was dropped and the merchants were practically left to their own devices in carrying on business with a chronic scarcity of currency. In 1772 Acting Governor Cramahè, in a despatch to Hillsborough, describes the situation at that period. I give the despatch slightly condensed. In the spring of the present year there was brought into this Province from the neighbouring colonies, a considerable quantity of light Portugal gold in the expectation, it is thought, of making a considerable profit, every kind of gold coin passing current here up to that time by tale and not by weight. But, as many of them had been filed and sweated till

they lacked from 5s. to 10s. they could not escape notice, and this, added to private advices received by some of the merchants, caused alarm and put a stop to their circulation, much to the detriment of the public. As in the neighbouring colonies it was customary in commerce to pass the half Johannes, weighing 9 dwt. at 8 dollars, it would have driven the only coin of which there is any quantity out of the country, if the old ordinance of 1764 were enforced, and people were compelled to receive and pay them at the rate mentioned there of 9 dwt. 3 grs. Further, it would have been unjust, when silver brought so high a price, to oblige them to receive the half Joes, weighing 9 dwts, for 8 dollars, when it was really worth considerably more. He, therefore, could not act, but determined to allow matters to take their course and encouraged the traders of Quebec to meet and arrange the matter to suit themselves.

After considerable discussion the merchants of Quebec agreed to take and pay the half Joes weighing 8 dwt. 20 grs. at 8 dollars, in the hope of retaining so much more circulating cash in the country, and they published their resolution in the *Quebec Gazette*. To this he and the other officials agreed. But the traders at Montreal refused to adopt this agreement, and adhered to the system of the other colonies of receiving them at 9 dwt., which they also published. This caused the Quebec merchants, on account of their extensive trade with that region, to come to their terms. Thus the half Joes of 9 dwt. pass for 8 dollars, with allowances for any lack of weight ; confidence is restored and circulation is revived.

He must, however, observe that from the high price of silver, and owing to the constant importation from the neighbouring colonies of large quantities of rum, for which little else but hard cash is taken, the colony is likely to be drained of the little it now has of silver.

In replying to this, Dartmouth, who had succeeded Hillsborough, admitted that Cramahè had taken the only reasonable course under the circumstances. He admits further that the currency regulations of Quebec are in much need of revision, but says nothing can be done till the colony has some more permanent constitution. Until then the legal rating of the foreign coins must follow the statute of Queen Anne.

Accordingly we find no further changes proposed with reference to the currency until the passing of the Quebec Act and the recovery of the Province from the disturbances and invasion which followed it. Then the ordinance of 1777 was passed, in which, the colony of New York being in rebellion and its Montreal sympathizers in disfavour, the Quebec influence carried the day, and Halifax currency became the new standard of the colony. The rating of the dollar was changed from 6s. to 5s., and the other coins were rated in what was considered a fair proportion.

This ordinance has for its object to ascertain the value of the different coins usually passing in the Province, and to prevent them from being falsified or impaired. To accomplish the first purpose the following rates are established:—

Coins	Weight		Rate		
Gold	dwt.	grs.	£	s.	d.
The Johannes of Portugal	18	6	4	0	0
The Moidore	6	20	1	10	0
The Doubloon, or four Pistole piece	17	0	3	12	0
The Guinea	5	8	1	3	4
The Louis d'Or	5	3	1	2	6
Paying two-pence one farthing for every grain of gold under weight.					
Silver					
The Spanish Dollar				5	0
The British Crown				5	6
The French Crown, or piece of six livres tournois				5	6
The French piece of four livres ten sols turnois				4	2
The British shilling				1	1
The French piece of twenty-four sols tournois				1	1
The Pistereen				1	0
The French piece of thirty-six sols tournois				1	8

All higher or lower denominations of these coins were to pass in due proportion, and at these rates they were to be a legal tender for all debts whatever.

The second object aimed at in the ordinance was sought to be attained by appointing penalties for the diminishing or impairing of any of the foreign coins circulating in the Province, the Britlsh coins being protected by Imperial statute. After prohibiting the making or importing of false or counterfeit

copper money, it is enacted that no person shall be obliged to receive more than the value of 1s. in copper at any one payment.

With reference to the relative values assigned to the coins by this ordinance, several points may be noted. When, taken on the basis of intrinsic or bullion value, the Spanish dollar was rated at 5s. and the British crown at 5s. 6d. the latter was undervalued to the extent of 4d. currency, which was quite sufficient to drive it out of circulation. Again, the French crown being valued at 5s. 6d. was overrated as compared with the dollar. The French coin contained only 403 grains of fine silver, whereas 5s. 6d. was represented by $1\frac{1}{10}$ Spanish dollars containing 408·87 grs. fine. Hence French crowns were sure to gravitate towards, and remain in Canada to the exclusion of dollars. Further, according to the table, $5\frac{1}{2}$ pistereens were legal tender for 5s. 6d. the value of the French crown. But $5\frac{1}{2}$ pistereens contained only 380 grains of fine silver, while the French crown contained 403 grains, a difference of 23 grains, which would have been sufficient to drive out the French crowns had it not been for the conservative adherence of the French Canadians to their familiar coins. The French crowns, too, were many of them very much worn, and were thus in no special danger of being exported as bullion.

There was inequality in the gold coins also, which was further complicated by their being subject to sweating and clipping or filing where the margin between the full weight and the weight at which they were permitted to pass was at all considerable. The Quebec and Montreal merchants, being consulted on the subject of bringing the gold coin to a definite weight, were once more unable to agree. The Quebec merchants were in favor of plugging and stamping the current coins to establish their uniformity in weight. They also desired a lower weight standard for the guinea, 5 dwt. 6 grs., instead of 5 dwt. 8 grs. as then fixed, to encourage the King's coin to circulate in the country. But to these and other recommendations the Montreal merchants objected, preferring to leave matters as they were.

As a change in the constitution was again impending, the Government took no action in the meantime, hence the next

attempts at official regulations were made under the representative Governments established in the two provinces into which Canada had been divided by the Constitutional Act of 1791.

The ratings of the standard coins by the ordinance of 1777 being very unequal, led to the practical exclusion of several coins from general circulation. But it was the scarcity of currency, a chronic complaint in Canada in times of peace, which suggested to the law-makers the need for a revision of the currency ordinance. On April 17th, 1795, a bill was introduced into the Lower Canadian Legislature to regulate the currency. A considerable discussion was called forth, but nothing definite accomplished until the following session, when an Act was passed, 36 Geo. III, cap. 5, whose preamble gives expression to the prevailing view: "Whereas it will tend to prevent the diminution of the specie circulating in this Province, that the same be regulated according to a standard that shall not present an advantage by carrying it to the neighboring countries, and whereas, by the ordinance now in force for regulating the currency of this Province, an advantage does arise by carrying gold coin out of the same, be it therefore enacted, etc." The new ratings appointed are the following :—

Coins	Weight dwt.	Weight grs.	Rate £	Rate s.	Rate d.
Gold					
British guinea	5	6	1	3	4
Johannes of Portugal	18	0	4	0	0
Moidore	6	18	1	10	0
Milled doubloon, or 4 pistole piece of Spain	17	0	3	14	0
French louis d'or, coined before 1793	5	4	1	2	6
French pistole, coined before 1793	4	4		18	0
American eagle	11	6	2	10	0
Silver					
British crown				5	6
British shilling				1	1
Spanish milled dollar, equal to 4s. 6d. sterling				5	0
Spanish pistareen				1	0
French crown, coined before 1793				5	6
French piece of 4 livres 10 sols tournois				4	2
French piece of 36 sols tournois				1	8
French piece of 24 sols tournois				1	1
American dollar				5	0

In the case of the gold coins, for every grain over or under the standard of weight as given, 2¼d. were to be allowed or de-

ducted. After June 1st, 1797, in all payments exceeding £50 currency, at the option of either party to the payment, the gold should be weighed in bulk and a discount of two-thirds of a grain on each gold coin allowed to cover any loss that may accrue by paying away the same in detail. When so weighed, the gold coin of Britain, Portugal and America shall be computed at 89s. currency per oz., and that of Spain and France at 87s. currency per oz. The remainder of the act deals with counterfeiting, etc. A similar act, identical with that of Lower Canada in all essential respects, was passed by the Legislature of Upper Canada in the same year, 1796, thus maintaining a uniform rating in the two provinces.

In this act we observe that the Quebec merchants have secured their object in having the guinea accepted as full weight at 5 dwt. 6 grs. while retaining its value of £1 3s. 4d. The Johannes and moidores are also allowed at reduced weights, the former at 6 grs. and the latter at 2 grs. under the previous standard, while their values remain unchanged. The doubloon at the old standard of weight is raised 2s. in value. On the other hand, the French louis d'or is raised one grain in weight, while the French pistole and the American eagle are rated for the first time. Thus, on the whole, the act records a considerable effort to attract more gold coin to the country.

No attempt is made to remedy the inequalities in the ratings of the silver coins, which are continued at the same valuations as before. The new American dollar is added on the same footing as the Spanish dollar.

The French crown, being no longer coined, yet continuing to be considerably over-rated, out of deference to the prejudices of the French Canadians, continued to crowd out the other coins. Owing to the wear and mutilation it steadily diminished in value and continued to be for many years after this a constant source of difficulty in the trade of the country.

Meanwhile the practice of the Montreal merchants, still coloured by their New York connection, had extended to Upper Canada, whose loyalist settlers were mainly from the old colony of New York. Though the Halifax standard of 5s. to the dollar was the official and legal rating, yet the usages of the people in their dealings with one another tended to perpetuate the old

New York rating of 8s. to the dollar, the basis of which was the Mexican real, eight of which made up the dollar. This rating was known in North America as the York shilling, which in later times was identified in visible shape with the British sixpence.

In the United States the new national decimal standard, with a definite coinage, was gradually taking the place of all other standards and coins, and as the new system was well maintained by the business men, the foreign coins, especially the light and defaced ones, began to find refuge in Canada. This was an evil which in the absence of any definite colonial currency it was almost impossible to avoid, and for some considerable time the Canadians took no special pains to avoid it. Their chief anxiety still centred in the question as to the relative values of the gold coins. Hence in the Act of 1808 for the further regulating of the coinage, the only changes made were in the list of gold coins. The preamble stated that "by the Act now in force the relative values of the gold coins current in this Province is not accurately established." The ratings of the gold coins fixed by this act are as follows:—

Coins	Weight		Rate		
Gold	dwt.	grs.	£	s.	d.
Guinea	5	6	1	3	4
Johannes	18	0	4	0	0
Moidore	6	18	1	10	0
Milled doubloon, or 4 pistole piece of Spain	17	0	3	14	6
French louis d'or, coined before 1793	5	4	1	2	8
French pistole piece, coined before 1793	4	4		18	3
American eagle	11	6	2	10	0

Here, it will be observed, the doubloon is increased in value by 6d., the louis d'or by 2d., and the French pistole by 3d. Other changes made by the act were: (1) The reduction of the limit of payment by weight from £50 to £20; (2) while retaining the weight for American, Portuguese and British gold coins at 89s. per oz., the rate for Spanish and French gold coins was raised from 87s. to 87½s. per oz.; (3) in the allowance on individual coins for every grain above or below the standard weight, Spanish and French gold coins were to be allowed 2⅕d. per grain instead of 2¼d. as before, and which is still retained for the others.

The following year, March 9th, 1809, the Legislature of Upper Canada passed an act altering and amending the previous act of 1796 for the regulation of the current coins "in order to equalize them to the current value of the like coins in the Province of Lower Canada." In this act the upper province simply follows the changes introduced in Lower Canada, still maintaining, thereby, a uniform rating in the two provinces.

During this period we find that the Imperial Government in its colonial military establishments still continued to keep its books and make its payments to the troops in accordance with the sterling standard. Yet the money employed in the Government payments, even when imported from Britain, was not, as a rule, British money, but Spanish dollars rated, as we have seen, at 4s. 6d. However, in 1808 we find an official despatch stating that £100,000 in specie will soon be forwarded to Quebec and £102,664 to Nova Scotia, but "the Lords of the Treasury desire that general orders be published stating that the dollars will be issued to the army at 4s. 8d. sterling each." This meant a reduction of 2d. on the dollar from the soldier's pay. Doubtless it was intended to offset the virtual premium on specie in Britain, and the risks incurred in sending it abroad.

The employment of the army bills during the war of 1812-15, and their continued circulation for some time afterwards, relieved the usual anxiety as to the circulating medium. It was provided, however, in section 15 of the first Army Bill Act of 1st August, 1812, that "no person whatever shall export or otherwise carry out of this Province, any gold, silver, or copper coin of any description whatsoever, or any molten gold or silver in any shape or shapes whatever," on pain of having the whole seized and forfeited. This was not repealed until March 8th, 1817. As late as the end of September, 1816, an item in the *Montreal Herald* refers to the seizure of $10,000 at St. John's going out of the Province to New York. The establishment of the first banks shortly afterwards, provided another paper currency to take the place of the army bills, among the English section of the people at least. But the French-Canadian habitant, who had looked with suspicion upon the army bills, continued to distrust the bank notes. Always using the livre as his money of account, he clung to the French coin-

age as part of those French Canadian institutions which he was taught to zealously guard against all encroachments on the part of British substitutes.

But after 1792 the old French coins circulating in Canada were no longer minted, hence there was no means of renewing the supply. In consequence, the French Canadians found it necessary, as the lesser of two evils, to legalize the circulation of the French coins struck after 1792. In 1819 the act 59th Geo. III, cap. I, was passed, in which it is stated that "it is expedient and necessary to provide that the gold and silver coins of France, coined since the year 1792, shall be made current and be deemed a legal tender in this Province."

The following coins are then specified with their ratings:—

	dwt.	grs.	£	s.	d.
Gold					
Forty francs piece..................	8	6	1	16	2
Twenty francs piece................	4	3		18	1
Silver					
Piece of six livres..................				5	6
Piece of five francs tournois				4	8

And all the higher and lower denominations of the said gold and silver coins shall also pass current and be deemed a legal tender in payment of all debts and demands whatsoever in the Province.

The provisions of this act were not adopted in Upper Canada, where, therefore, the new French coins were not legal tender.

In Upper Canada the practice of keeping accounts and doing business in York currency, already referred to, had caused considerable difficulty in the courts. York currency, though having no standing in the eyes of the law, had, nevertheless, to be dealt with as an existing commercial fact. To definitely terminate this confusion, an act to establish a uniform currency throughout the Province was passed in Upper Canada in 1821, 2nd Geo. IV, cap. 13. The preamble states that "the several gold and silver coins current in this Province have respectively a nominal legal value in pounds, shillings, and pence, bearing the relative proportion of ten to nine, to the sterling money of account in the United Kingdom of Great Britain and Ireland, nevertheless in some parts of this Province, accounts continue to be kept and contracts to be made in New York currency, estimating the Spanish milled dollar at eight shillings, bearing

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to sterling money of account the proportion of sixteen to nine, which diversity must necessarily occasion great and manifest confusion." It is provided that after July 1st, 1822, no interest shall be demandable on any bond, note, or other instrument made after that date in this Province, in which the penalty or sum payable shall be expressed in New York currency. Nor will any costs be allowed in actions brought thereon. After the same date no rendering of accounts shall be deemed a demand, or acknowledgment thereof given in evidence, unless it shall have been rendered in Provincial currency. The same applies to shop books presented in evidence. To make these provisions known to the people at large, the act was to be read in Court on the first day of the four next Courts of General Quarter Sessions.

The next important event in the history of Canadian currency is the attempt made by the British Government in 1825 to introduce the British currency standard and the British silver coins into all the colonies. But this brings us into a new exchange era for both currency and banking.

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THE NOVA SCOTIA ACT RESPECTING ASSIGNMENTS AND PREFERENCES

LAWS dealing with bankruptcy and insolvency have never been popular in Nova Scotia, or gained any firm foothold as part of the legal system of the province. Prior to Confederation there was upon the statute book no Act whatever respecting the subject, nor was there apparently any great necessity for one. Nova Scotia was in those days a very self-contained little community. Its business was largely centered in Halifax, and controlled by the merchants of that city. Between those merchants themselves competition was a very different thing from what it is to-day. Personal friendships were common among them, in many cases connections existed among them by family or marriage. Each had his own customers, and largely his own territory, and interference with either was looked upon rather as "bad form." Credits were long, but the customers as a rule were well known, and insolvencies infrequent. When they did occur, as often as not the liabilities were confined to a few firms who effected an amicable arrangement among themselves.

Into this Arcadian business community two violently disturbing elements were thrown by Confederation—the Intercolonial Railway and the Insolvent Act of 1869. The first, coupled with the removal of the former provincial tariff, brought the merchants of Montreal and Toronto into sharp competition with those of Halifax, The Canadian "drummer" was everywhere in evidence. The enterprise of the Halifax banks in pushing agencies into every town and village in the province, and thus increasing the facilities both for obtaining credit and for the collection of accounts, aided the intruders. The province shared in the general prosperity that prevailed in the first few years after Confederation, business boomed, credits were widely extended, there was much over-trading and injudicious speculation, and many persons were drawn into trade who were in no way fitted for it.

With the "nipping frost" of hard times that succeeded the fat years there inevitably came a tremendous crop of insolvencies—a thing wholly new and foreign to provincial experience. Unfamiliar with the Insolvent Act, and inexperienced in the working of the system, it is not surprising if a widespread prejudice grew up against all insolvent laws, as such. The facilities with which discharges were obtained (in which respect both the Acts of 1869 and of 1875 were probably much too lax) were especially unpopular. The honest trader struggling to carry his load and keep good his name was amazed and disheartened at the ease with which his less scrupulous neighbor went in at one door of the court and in a month's time emerged from the other freed from all liability. The Halifax merchant found that his proximity to the insolvent and his past friendly relations with him were of no advantage. Bankrupt stocks flooded the market. Inexperienced and often incompetent assignees made "ducks and drakes" of estates. From one cause and another the "Act" became thoroughly unpopular. In the popular belief, it is hardly too much to say, it was regarded as the cause of insolvency, and probably in no part of Canada was there less mourning over its summary execution in 1879.

The people who had been under a vague impression that if there was no "Insolvent Act" there would be no insolvencies were soon undeceived. The crop was indeed much reduced for a time, chiefly through the reduction in the volume of trading, and because most of the shaky ones had taken advantage of the Act to go through the court. But with the return of activity in business a fresh harvest was not long in ripening, and the people of the province were rapidly introduced to the old common law assignment with its preferences and other manifold iniquities. In form these assignments were all practically identical. Some relative or friend or friendly creditor of the insolvent was chosen by him as his assignee. In the selection of this assignee the creditors of the insolvent had no say whatever, nor the slightest control or supervision over his actions, except possibly in case of glaring misconduct by means of a tedious and expensive action in court. He could refuse, and sometimes did, to give the slightest information respecting the estate entrusted to him, with the inevitable result that the

estates were often grossly and even corruptly mismanaged. The deeds were generally one form—an assignment of everything the debtor possessed with directions to turn into cash, and to pay first a list of preferred creditors, and then such of the general body of creditors as should be willing by executing the deed to release their claims in full. The latter direction was as a rule little better than a mockery, as the preferences, with commissions and expenses, almost invariably ate up all the assets. So much was this the case of late years that a clause commonly inserted in the deeds provided that in case the estate proved insufficient to pay the preferences in full they should be paid ratably. If the general creditors refused to execute the deed the inconvenience to the debtor was not so great as would have seemed. It is true he remained undischarged, but some way was generally found of continuing business in the name of another. The provisions of the Married Women's Property Act, intended originally as a protection of her property against her husband and his creditors, have been found a particularly convenient mode of enabling him to perpetrate a fraud upon them.

With all its iniquities, however, it can not be said that there was any very considerable demand for an abolition of the system. Popular recollection of and prejudice against the old insolvent Acts were strong enough to prevent any general demand for their removal. The banks, who might have been expected to lead the way to a better system, were not such sufferers by the one in use as to make them vigorously insistent upon a better one. It was not through any special love for them that such was the case, but because in most cases the paper held by them was endorsed by persons whom the debtor felt constrained to protect, and it was to these, and not to the banks that the preference was vicariously given. The Halifax merchants, as a whole, were opposed to a change. Rightly or wrongly many of them believed the existing system operated to their advantage as against their Canadian competitors. They were on the ground, had generally earlier information as to who was in a shaky condition, and were more frequently people whose business friendship the debtor thought worth propitiating by a thoughtful preservation of their interests. Creditors out-

side the province were generally the ones hardest hit, and though individually and through boards of trade they might, and for years did, rage furiously, they were powerless to affect provincial legislation, and their misfortunes evoked small sympathy or little feeling other than a certain amount of chuckling in various quarters, and a hope that it would be a lesson to keep themselves out of territory in which they had no business to be.

Nevertheless the insistent attack upon the prevailing system, and the charge continuously made that to permit its continuance was a disgrace to the province produced considerable effect. The Ontario Act abolishing preferences was highly commended, and in 1896 an incomplete copy of it was introduced in the Legislature as a private measure. It cannot be said that the bill had many friends or that either it or the Act from which it was copied were particularly well understood. But control and supervision of any legislation of a general character is shockingly lax in the Nova Scotia Legislature. It is the old story of what is everybody's business in general being nobody's in particular, and unless it happens to antagonize some particular interest, once a bill is introduced into the legislative "hopper" it grinds its way through by simple routine, not so much because anybody wishes it as because no one takes the trouble to oppose it. The bill passed the Lower House. In the upper branch, however, sufficient opposition was developed, largely on account of the feeling among the merchants, already alluded to, that the prevailing system was, as against their outside competitors, rather an advantage than otherwise, and the bill was thrown out. Within a short time, however, Halifax made the unpleasant discovery that in its turn it was beginning to be regarded by the smaller towns of the province in much the same way as it had been accustomed to regard Montreal and Toronto. A couple of particularly bad cases in which Halifax creditors were "hard hit" and local ones preferred brought a change of feeling and a withdrawal of opposition, and when the bill was again introduced in 1898 it was allowed to become law.

The Ontario Act, of which the Nova Scotian is merely an incomplete copy, may roughly be described as an Insolvent Act

omitting the provisions for the insolvent's discharge, and for compulsorily placing him in bankruptcy. It abolishes preferences by making any assignment which contains them, or any confession of judgment, transfer or similar device for giving a preference void as against any creditor who is thereby injured or delayed. The debtor may make an assignment for the general benefit of his creditors, that is one containing no preference, to an assignee of his own selection. But even this is void as against a similar assignment to the sheriff, for whom may be substituted any other person selected by the creditors. An assignment of this latter description, and a winding up under it of the estate of the debtor is what is arrived at by the Act, and for this purpose a fair amount of machinery is provided. But what if the debtor declines to make such an assignment? Obviously it is the last thing in the world he would wish to do. There is no provision for his discharge, for that he must trust wholly to the sheer generosity of each individual creditor. He can no longer tempt them with the prospect of a dividend however insignificant as a consideration for releasing him. The creditors take the dividend whatever it is, and the release of the debtor is a matter for each creditor to do as he pleases. These are all the terrors of the Bankruptcy Court with none of its charms. If the unfortunate trader is to be stripped of all he has and turned out naked, but with his burden of debts still hanging round his neck, he might as well have nothing to do with the Act at all, but either let the law take its course, or set his wits to work to evade it.

Against a debtor who is determined not to have anything to do with the Act if he can help it the Act is not a particularly effective weapon. It is true it makes void all transactions in the nature of a preference, but its means of preventing them are not very efficient. There is nothing like the instantaneous arrest of the debtor's business effected by an attachment under the Insolvent Act. The only means of attacking a transaction presumably forbidden by the Act is through the ordinary operations of the Court. Unless a combination can be effected among the creditors (a thing by no means always practicable) some one creditor must take the risk of initiating proceedings to set aside the transaction. If he is able to make a seizure of any of the

debtor's property by an execution he will in the event of success be entitled to enjoy the fruits of his victory. But circumstances do not always admit of such being done. To obtain a judgment requires time, and an astute debtor can generally manage in the interval to so order his affairs that an ordinary execution is of little avail. In that case the only mode of impeaching the transaction is by an action to set it aside as a fraud on the general body of the creditors. If the plaintiff in such an action succeeds, his success will enure to the benefit of all the creditors. If he fails, the costs—both his own and his opponent's —will have to be borne by himself alone. In any event success may come only after a protracted and costly struggle, lasting more than a year, by the end of which time the bone of contention, the assigned property, will have entirely disappeared, or lost most of its value, and if the assignee is a man of no substance the victory is a barren one. It is hardly to be wondered at, therefore, that in many cases transactions seemingly within the Act are allowed to pass unchallenged.

Again, the Act itself provides a number of ways in which evasion is possible. It expressly exempts from its operation (sec. 3) "any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; any payment of money to a creditor; any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind which is made in consideration of any present actual *bona fide* payment of money or by way of security for any present actual *bona fide* advance of money or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property, provided that the money paid on the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor." It is obvious that in this enumeration of ways in which a debtor may legitimately dispose of his property, even though he is, in the language of the opening section of the Act, "in insolvent circumstances or unable to pay his debts in full, or knows himself to be on the eve of insolvency" the door is opened wide for attempts at evasion by transactions which though preferences to all intents and purposes can yet be seemingly brought within one or other of the things which a debtor is permitted to do,

and the Ontario Law Reports are full of cases in which the ingenuity of debtors and the difficulty of deciding on which side of the line a particular transaction fell are amply illustrated. To refer to them at any length would be beyond the scope of this article.

So far the Nova Scotian Act is merely a duplicate of the Ontario one, and all the difficulties which have been found in the operation of the latter are certain to occur in the cases arising under the former. But we now come to a point in which the Nova Scotian Legislature has seen fit to make a wide departure from its copy in a way which will probably render their Act almost if not altogether worthless.

As has already been pointed out, one of the questions which will inevitably present themselves to the embarrassed debtor will be, "if an assignment under this Act is going to be of no use to me why should I make one, why not let the law take its course? What that course will be is plain enough. His creditors will take judgments against him, levy on his property, sell it by the sheriff, and apply the proceeds in satisfaction of their claims. Obviously here is another door wide open for the evasion of the Act. All that is necessary is a hint to the creditor whom it is wished to prefer, to issue his writ promptly, or if some other creditor is equally prompt a sham defence will serve the purpose equally well. In one way or other there is no difficulty in permitting the claim of the favored creditor to ripen to a judgment and execution more rapidly than the claims not so preferred. True, there is collusion. But it is not clear that this is one of the things in respect to which collusion is forbidden by the Act. And if it were, collusion is always a difficult thing to prove, and particularly so in a case like the one under discussion. It takes two to collude as well as to quarrel, and there is little difficulty in conveying the hint to the favored creditor in such a fashion or through such a channel that he can with a tolerably clear conscience affirm that his conduct was governed by no other considerations other than ordinary business sagacity. True also that a sheriff's sale is not a very convenient mode of working out a preference. But with a friendly execution creditor this too can be managed—buying the goods in himself or by a friend under an arrangement with the debtor would be one mode

of doing the trick. Here is an obvious means of evasion; how have the two Acts respectively tried to deal with the difficulty?

Section II of the Ontario Act provides that:

"An assignment for the general benefit of creditors under this Act shall take precedence of all attachments, of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands, or to the lien, if any, of the creditor for his costs who has the first execution in the sheriff's hands."

This section the Nova Scotian Legislature, for some reason, did not see fit to re-enact. Perhaps it considered that the thing to be aimed at was to strike down preferential assignments, leaving the rights of creditors to obtain satisfaction by judgment, or attachment, untouched, possibly without adequate consideration of the fact that the closing of the door to preference, by means of an assignment, was certain to bring about a search for some other means of coming at the same end. The New Brunswick Act, it might be added, has the Ontario section. But the additional section by itself accomplishes very little. It is only against "An assignment for the general benefit of creditors under the Act," that the lien obtained by an execution or attachment is vacated. It enables a debtor, against whom judgments have been obtained adversely by creditors whom he does not wish to prefer, to defeat such judgments, and effect uniform distribution of his assets, by making an assignment under the Act. That is something no doubt, but it is a case which does not often happen. As a rule traders in insolvent circumstances do not permit their affairs to run on until judgments are actually obtained against them. By one financial expedient or another they can generally stave off the actual issue of a writ until it is evident, even to themselves, that their affairs are in a hopeless condition, and that an arrangement of some sort must be made. This is the time when the scheme of a preferential arrangement is hatched, and if there is no other way of effecting it open, it will be done by means of judgments in favor of the preferred creditors, either by giving them a friendly hint, or by putting in sham defences to actions instituted by other creditors. As against judgments obtained in this way the section quoted is

helpless because the debtor obviously will not vacate them by making an assignment under the Act, and so destroying his own scheme for a preferential arrangement.

In Ontario, however, the way of the debtor in this direction is not nearly so smooth. It seems, in fact, to be pretty effectively stopped by another very important Act of that province, which appears to have been wholly overlooked by the Legislatures of Nova Scotia and New Brunswick. This is the statute known as the "Creditors' Relief Act," Chapter 78 of the last Revision of the Ontario Statutes. The effect of this statute is to completely do away with the common law right of the creditor having the first execution levied upon the property of his judgment debtor, to have the execution satisfied, in full, out of the proceeds of his levy, in priority to any creditor levying under a subsequent execution. By the provisions of this statute a sheriff in whose hands an execution has been placed is required to enter it in a book open to public inspection, and to distribute the proceeds of any property levied upon under it ratably among all the creditors who lodge with him executions against the debtor, within one month after the lodging of the first execution. An attachment against an absent or absconding debtor is put upon the same footing as an execution. Any attempt at collusion between the holder of the first execution and the debtor is guarded against by provisions enabling the holders of subsequent executions to put the machinery of the Act in motion in case of undue delay on the part of the holder of the first execution. Provision is made by which creditors of the debtor who have not secured judgment are enabled to do so in a summary manner before a County Court Judge. Machinery is provided for the distribution of the debtor's assets by the sheriff. In short, the Act, so far as it goes, is a rough and imperfect insolvent Act, in which the placing of an execution against the property of the debtor in the hands of the sheriff takes the place of the attachment, assignment, or receiving order, of a regular insolvent Act or bankruptcy law. How far the law goes in supplying the place of an insolvent law can only be told by an Ontario practitioner familiar with its practical application. It is apparently clear that it can do so only in a very imperfect fashion, and in anything of a large and complicated estate

would be almost worthless. But it at least is clear that it must operate as a very effective check upon the debtor who wishes to defeat the Assignments Act, either by the simple method of doing nothing and letting the law take its course, or by collusive proceedings to enable a favored creditor to obtain judgment in priority to others. The Ontario debtor apparently has to choose between the Scylla of the Assignment Act and the Charybdis of the Creditors' Relief Act, and under the one or the other his property, or such portions of it at any rate as are capable of seizure under an execution, can be reached and made available for general distribution among his creditors. In this dilemma the probabilities apparently are that he would prefer to make an assignment as affording facilities for dealing with his estate to better advantage and obtaining a better dividend, and so giving a better prospect of obtaining a discharge from the creditors, or at least leaving a smaller balance due them. But this is mere speculation. The obvious thing is that the Nova Scotian or New Brunswick debtor is under no such compulsion. There is no apparent reason why he should make an assignment under the Act at all, when it is so much more to his advantage not to do so. In this respect the New Brunswick statute is no better than the Nova Scotian. The provision making an execution void as against an assignment under the statute is worthless so long as there is nothing to put a pressure upon the debtor to make the assignment, such as is put by the Ontario Creditors' Relief Act, and the Nova Scotia statute seems therefore the more logical of the two in omitting all reference to execution creditors.

It is not surprising, therefore, to find that in Nova Scotia at any rate the Act has thus far been of so little service as to be almost a dead letter, and has had no effect whatever in preventing collusive judgments, and almost none in preventing preferential assignments. For some time past business throughout the province has been fairly good, and the crop of insolvencies consequently rather light, and public attention has not been strongly drawn to the complete inadequacy of the Act, but it can hardly fail to receive attention when the next recurring period of depression brings the inevitable increase of insolvencies.

When the statute is confessedly a failure, and almost a dead letter by reason of so great an imperfection as the one just pointed out, it seems somewhat idle to deal with minor points, but a few of them may be mentioned. The fact that amendments are being made to a statute is proof that it is alive, and that the strain of actual proceedings under it is revealing weaknesses and defects requiring to be strengthened and made good. Several such amendments to the Ontario statute between the revisions of 1887 and 1897 have much improved that Act as a piece of working machinery. These have not been embodied in the Nova Scotian statute, the reason being apparently that when the Act was first introduced into the Legislature the last Ontario revision had not been published, and on the second occasion the bill was simply a copy of that previously introduced.

One such change obviously necessary to the working of the Act is that affecting the valuing of any security held by a creditor claiming to rank upon the estate. The Nova Scotian Act following the Ontario of 1887 simply requires every creditor claiming upon the estate to state in his proof whether he holds any security for his claim or any part thereof. If the security is on the estate of the debtor or on the estate of any third party for whom the debtor is only secondarily liable he is required to value his security, and the assignee has then the right either to permit him to rank for the balance of his claim after deducting the value of the security or to take over the security at an advance of ten per cent. upon the value put on it by the creditor, to be paid out of the estate "as soon as the assignee has realized such security." In this latter case the difference between the value at which the security is retained and the amount of the gross claim of the creditor is to be the amount in respect to which the creditor is to vote and rank. As might have been anticipated creditors hesitated about putting a value upon their securities, and by an Ontario amendment which is not reproduced in the Nova Scotian Act proceedings may be taken in the County Court to compel him to do so or in default to be entirely barred from any right to share in the proceeds of the estate.

Another amendment in respect to which the Ontario Act differs from the Nova Scotian is that which enables the debtor

who wishes to dispute a claim, with the proof of which the assignee is satisfied, to do so upon obtaining permission from a County Court Judge.

Another more important respect in which the Acts differ is in respect to the powers of the assignee and the creditors to insist upon an examination into the affairs of the debtor. The Ontario Act of 1887 was wholly wanting in any provisions of this sort, and the Nova Scotian Act has the same defect, although the Ontario amendments have been added to the New Brunswick Act. It would not seem to require very much either of knowledge of the practical working of bankruptcy laws or of human nature to have anticipated that a debtor who has been forced into an assignment is very apt to make over as little of his property as he possibly can, and to conceal as much as possible from his assignee and creditors. The Nova Scotian Act makes no attempt to meet this difficulty. The assignee will take apparently only what the debtor chooses to make over to him, or what can be readily discovered and made available. By the amendments to the original Ontario Act the assignee is empowered without obtaining any order to that effect to examine on oath before any one of a variety of different functionaries named, either the debtor or any clerk or servant in his employ, "touching the estate and effects of the assignor and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities and as to the disposal he has made of any property since contracting such debt or incurring such liability and as to any and what debts are owing to him." If the debtor does not attend for examination when required, or "refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from the examination that he had concealed or made away with his property in order to defeat or defraud his creditors or any of them" the Act provides for his imprisonment for any term not exceeding twelve months. Further provision is also made to compel the production of books and documents, and for the punishment of the debtor or any other person in whose possession they are, for failure to produce them. These provisious have been added to the New

Brunswick Act by an amendment of 1897, and if the Nova Scotia Act is to be continued and made of practical value something of the same sort will require to be incorporated in it.

Another difference apparently of no great consequence is that while in Ontario an assignment under the Act may be made to the sheriff of the county or to any other person, with the consent of the majority in value of the creditors, in Nova Scotia by the combined effect of this Act and of an amendment of the present year the assignment must be to an official assignee for the county to be appointed by the Governor-in-Council.

Another and more important difference between the Acts and one of particular interest to readers of this magazine is that respecting the treatment of creditors whose claims are based upon negotiable instruments. The section which the two Acts have in common requiring a creditor holding security of any sort to put a value upon the security after which the assignee can either compel the creditor to rank for the amount of the claim, less the value put upon the security, or may take over the security, has already been referred to. The succeeding Ontario section is as follows:

"If the creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this (*i.e.* the one just referred to) section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim."

As being by far the largest holders of negotiable instruments this section is one peculiarly concerning the banks, and it is a most unjust one. The right to receive payment from all the parties to a negotiable instrument is not a "security" either by the etymology of the word or by the ordinary understanding and acceptation of that phrase. The right to receive such payment from all parties was the consideration which induced the holder of the instrument to discount it. He has the right so long as any one of the parties to the instrument is solvent to pursue his legal remedy to recover payment from him by an action for the full amount, and he can pursue that remedy concurrently against all the parties to the instrument until from

some or all of them he has obtained payment in full. The right to rank upon the estate of an insolvent is only the substitute which the law provides for the right to sue him if he had not made an assignment, and it would seem singular if the one should not be as extensive as the other. So long as any other party to a negotiable instrument is solvent there is not much likelihood of the holder troubling himself to rank upon the estate of an insolvent indorser. When all the parties have become insolvent his right to rank upon their estates and receive dividend ought to be as extensive as his right to maintain actions against them if they had not become insolvent. To compel him to treat as "security" what is essentially anything but "secure," namely, the possibilities of receiving anything from the estate of some other insolvent party, is an injustice, and in effect depriving the holder of the rights which he received when he discounted the instrument. The term "security" is properly only applicable to something by which its holders are entitled to a lien upon some specific property which can be enforced in discharge of the claim.

A legislature sitting in a city of such banking activity as Halifax could hardly be otherwise than alive to such considerations as these, and the section of the Ontario Act was dropped and for it substituted the following:

"If a creditor holds a claim based upon a negotiable instrument upon which the insolvent is only secondarily liable, and which has not matured at the time of proving the claim, such creditor in his proof of claim shall set a value upon the liability of the person primarily liable thereon, and the difference between such value and the amount of the claim shall, until the instrument matures, be the amount at which the claim shall be calculated for the purpose of voting at meetings and other purposes, *except the payment of dividends thereon or collocation in the dividend sheets*, but after the maturity of such instrument the claim shall be calculated for all purposes at the full amount, less any sum paid on account thereof by the person primarily liable on such negotiable instruments."

This section was taken from the Insolvent Act introduced as a Government measure into the Dominion Parliament in 1894, and substantially represents the English bankruptcy law, though it is doubtful if under the rules regulating the proof of claims contained in this schedule to the English Act of 1883 even the

limitation as to the right of voting would be enforced upon the holder of a negotiable instrument.

No attempt has been made in this article in the way of a detailed criticism upon the wording of the Nova Scotian Act. Anything of the sort would have been merely a legal treatise on the Ontario statute, and the reported cases upon it. The Ontario Act itself is by no means a good piece of legal draughting, and it is evident even from a cursory glance through the Ontario cases that there are abundant loopholes in it by which the debtor can baffle and thwart his creditors seeking the compulsory liquidation of his assets. None of these difficulties have been experienced in Nova Scotia, for the simple reason that practically no attempt has been made to work under the Act. It is virtually a dead letter and from present appearances likely to remain so. If it is ever to become a thing of life it will be necessary not only to add the amendments which have been found requisite to make it workable in Ontario, but to provide some mode of compulsion to force debtors to make assignments under it, similar to that provided by the Ontario Creditors' Relief Act. From present appearances it is highly doubtful if anything of the sort will be attempted by the Nova Scotian Legislature. Two concurrent systems of insolvency law, each extremely crude and imperfect and with great possibilities of oppression for the honest, but unfortunate debtor, is not an inviting prospect. Insolvency laws of any description, as has been pointed out, are not specially popular in the province, but the feeling respecting them is that if we are to have an Insolvent Act at all it should be a complete and workable one, with provisions not merely to distribute the assets of the debtor proportionately among his creditors, but also to enable him, if merely unfortunate and not dishonest, or grossly incompetent, to obtain a discharge upon reasonable terms. Failing such an Act, the feeling in a good many influential quarters is that it is better not to attempt any further half measures, resulting almost inevitably in disappointment on one side and oppression on the other, but to let debtor and creditor work out their own salvation with such means as the common law and their own wits have put into their hands.

HALIFAX, January, 1900 F. H. BELL

GILBART LECTURES, 1899*

No. III

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

EVIDENCE OF ABSENCE OF CONSIDERATION

IT might be suggested that the unquestionable rule by which the consideration for a bill may be impeached, allows a contradiction or variation of the written document by verbal evidence. Of course, however much a bill professes to be for value received, you are perfectly at liberty to show that no value passed at all.

I take it, the explanation is, that the consideration is something really outside the contract, it is the foundation on which every contract not under seal, must rest, and in showing there is no consideration for a bill, for instance, you do away with the contract altogether, subject to any rights vested in third parties, just as you would if you showed it was induced by fraud or compulsion. And if you are doing away with the contract altogether, you do away with the part which relates to consideration. Or you may say that the expression, value received, or any other statement of a past or cotemporaneous consideration is merely equivalent to a receipt, which can always be contradicted. The statement of the receipt of consideration is not really a term of the contract. It is a very different thing where the consideration really forms one of the terms of the contract, as, for instance, where it is to be paid at a future date. Then no oral evidence is admissible to contradict or vary it. If one man agrees in writing with another to sell him a horse for £50 on a fixed future date, the purchaser would never be allowed to set up a prior or cotemporary oral agreement that the price was to be only £25.

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So that there is no real contradiction of the rule in this principle, which permits oral proof of absence of consideration, even though the bill be expressed to be for value received.

EVIDENCE OF COLLATERAL ORAL AGREEMENTS—EVIDENCE OF CONTRADICTORY ORAL AGREEMENTS

Now, with reference to this subject, there is a passage in "Chalmers on Bills of Exchange," which, in my opinion, is inaccurate and misleading. At p. 59 of the 5th edition, Mr. Chalmers says: "Though the terms of a bill or note may not "be contradicted by oral evidence, yet effect may be given to a "collateral *or* prior oral agreement by cross-action or counter-"claim."

So far as this statement applies to oral agreements which are purely and strictly collateral, no doubt it is correct. By a collateral agreement I understand one which, though in a way it may arise out of the same transaction as the bill or note, bears the same relation to it that one parallel straight lines does to another, viz., that they never meet. Suppose two men are settling a variety of disputes or matters of business between them, one of such disputes is arranged by A giving B a promissory note, and another by B undertaking to return a horse to A. Those are independent collateral contracts. If B does not return the horse to A, that would not be a defence to B's action against A on the promissory note, because it was not the return of the horse, but the settlement of the other question which was the consideration for the promissory note, but A could sue B or counterclaim against him in the action on the promissory note, or could set up the oral agreement to return the horse, inasmuch as it is strictly collateral, it does not seek to vary or contradict the written contract contained in the promissory note.

But as I told you, Mr. Chalmers goes on to say that effect may be given to a prior oral agreement by cross-action or counterclaim. He uses the words "collateral *or* prior oral agreement," and the context, of course, implies that such prior oral agreement may be one contradicting or varying the terms of the bill or note.

Of course, if Mr. Chalmers uses the word "collateral" in the sense of "cotemporaneous," as opposed to "prior," and

leaves it to be implied that the agreement he refers to, whether made before or at the time the bill or note is given, deals with an independent matter, and does not contradict or vary the terms of the bill or note itself; the statement, though very misleading in form and expression, would not be incorrect in law. But that is not the natural interpretation of the phrase, nor is it the sense in which it has been taken. I once had a case where an oral agreement to renew was set up as a defence to a bill. I got it struck out on the ground that it was an obviously bad defence. The defendant then set up the same thing as a counterclaim. I applied to strike this out, but the master refused to do it, his attention being drawn to this very passage in "Chalmers." As far as I can recollect, the case came to a short end somehow. I fancy the defendant paid; anyhow, the question was never fought out.

But I am fully prepared to support my own opinion, and to say that you cannot, either by cross-action or counterclaim, set up a prior or cotemporaneous oral agreement which contradicts or varies the terms of a bill or note, any more than you can set it up as a defence. It is not a question of form of action, but of a rule of evidence, as I showed you before. If the oral agreement can be given in evidence by a plaintiff, or a person in the position of a plaintiff under a counterclaim, it could be given in evidence by a defendant, and it is admitted a defendant cannot do it.

I do not believe for a moment any Court would stultify itself by allowing a man to recover damages for breach of an oral agreement to renew a bill, and at the same time giving judgment against him on the bill, on the ground that such oral agreement was not admissible in evidence as a defence.

Mr. Chalmers seeks to support his proposition by a quotation from Mr. Justice Byles. In the case of *Lindley v. Lacy*, in 1864, that Judge said as follows: "Evidence may be given of "an oral agreement which constitutes a condition on which the "performance of the written agreement is to depend, and if "evidence may be given of an oral agreement which affects the "performance of the written one, surely evidence may be given "of a distinct oral agreement upon a matter on which the "written contract is silent." Now this is a remarkable quota-

tion. The first part of it is bad law. You cannot give evidence of an oral agreement which constitutes a condition on which the performance of the written contract is to depend. You can give oral evidence of a condition until the fulfilment of which the written contract is not to come into existence, is to remain in embryo; but to say that after that stage you can fetter the fulfilment or performance by alleged verbal agreement is dead against the other judgments in the same case, dead against what Mr. Justice Byles says time after time in his book on bills, and dead against what the Court of Appeal said in the recent case to which I have alluded. The second part of the quotation is correct in law, but does not support Mr. Chalmers' view. Mr. Justice Byles says: "Surely evidence may be given of a distinct "oral agreement upon a matter on which the written contract is "silent."

Certainly it may, but the two conditions laid down here make the quotation no authority that an oral agreement may be put forward to contradict or vary a written one. First, it must be distinct; distinct, that is, not as the word is sometimes used as equivalent to clear, but distinct as meaning separated from, independent of, collateral to; and, secondly, it must relate to a matter on which the written contract is silent. That it cannot do if it varies or contradicts the written terms. That was really what Mr. Justice Byles meant, as is shown by Chief Justice Bovill, who, referring to this very case, said, in "*Young v. Austen*," in 1869: "The action there was brought for a breach "of the oral agreement, which was quite beside and collateral "to the written agreement between the parties."

It is noticeable that both the case in which Mr. Justice Byles made the remark quoted by Chalmers, and also this case of "*Young v. Austen*," were cases where the oral agreement was relied on as a ground of independent action, not as a defence to an action on the bill. And from both these judgments it is abundantly clear that, as I say, no oral agreement contradicting or varying a written one can be set up by a plaintiff, or person in the position of a plaintiff, any more than by a defendant in an action on the bill.

NOTICE OF DISHONOUR

The next subject with which I propose to deal, viz., notice of dishonour, is one which I suppose will always be a highly technical one. I think it was meant to be so. The rules relating to it are most precise and detailed ; where they contemplate any latitude, they express it by the use of the word "reasonable," and in many instances they seem to have so little to do with the real merits or main features of the transaction, that Courts have not unreasonably looked upon these particular rules as things to be interpreted strictly. As Lord Justice Collins says, in the case to which I am about to draw your attention, "The requirements as to notice of dishonour are arbitrary and highly technical, but they have long been settled by authority, and are now crystallized into statutory rules." They used to be even more technical than they are now, inasmuch as it was held by the House of Lords, in 1834, that the notice must distinctly convey the intimation that the bill had been presented and dishonoured. That decision was tacitly ignored. It is stated that, since 1841, no notice has been held insufficient in point of form or language, and the Bills of Exchange Act in this respect at least permits considerable laxity.

NOTICE TO DRAWER OF CHEQUE

But there is plenty of technicality left. I have always, for instance, considered it an anomaly that the drawer of a cheque should be discharged if he does not receive due notice of dishonour. He is the person ultimately liable, he has no remedy over against anybody, he is practically in the same position as the acceptor of a bill or the maker of a promissory note, and yet because a cheque is defined to be a bill of exchange drawn on a banker, and he is spoken of in the Act as a drawer, he is entitled to notice of dishonour just as if he was the drawer of a bill, and if he does not get it, and there is no valid reason for not giving it, he is released from all liability, both on the cheque and on the consideration given for it. Of course, in the majority of cases, notice would be dispensed with in the case of a cheque. A cheque is usually dishonoured, either because the drawer has stopped it, or because he has not got sufficient avail-

able funds in the banker's hands. Both these cases are provided for by sec. 50 of the Bills of Exchange Act. Notice is dispensed with (5) when the drawer has countermanded payment, that is the first case; (4) when the drawer or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, that is the second case.

But the holder would never be safe in not giving notice, since the burden of showing circumstances dispensing with it is always upon him, and he would know nothing about the grounds of dishonour except what he gathered from the banker's note on the cheque.

TIME—BREAK IN CHAIN OF NOTICES—BRANCHES OF BANK—NOTICE WRONGLY ADDRESSED—RECTIFICATION BY TELEGRAM

A technicality with reference to notice of dishonour recently divided the Court of Appeal, and raised some points worthy your consideration, especially as I cannot help thinking the learned Lord Justice Collins, who was in the minority, was nevertheless in the right.

It occurred in the case of *Fielding v. Corry and others*, decided on November 13th, 1897. The plaintiffs were holders of a bill. There were several defendants, and among them a Mrs. Edwards, who was an endorser. The bill was put into the hands of the *Cardiff* branch of the County of Gloucester Bank for collection, and forwarded by that branch to the London and Westminster Bank in London, who presented it on Saturday, November 10th, 1894.

The bill was dishonoured, and on Monday, November 12th, 1894, the London and Westminster sent by post a notice of dishonour, which by mistake they directed to the *Cirencester* branch of the County of Gloucester Bank.

On the following day, Tuesday, November 13th, they discovered their mistake, and telegraphed notice of dishonour to the Cardiff branch. There was no evidence as to the written notice of dishonour having reached the Cardiff branch, but on Wednesday, the 14th November, which was the day on which notice of dishonour should, in due course, have been given by the Cardiff branch, such notice was in fact given. The subsequent notices were given in time, and ultimately Mrs. Edwards

received notice at the time she would have received it had all the notices been given strictly in order and in due time. Judgment at the trial was given for the plaintiffs, and Mrs. Edwards appealed, on the ground that she was discharged, *notice not having been sent to the Cardiff branch in time.*

Now, it does not seem to have been even suggested that Mrs. Edwards was actually prejudiced in any way by the alleged irregularity. It was not contended that she had lost any remedy over against anybody, or anything of that sort. The whole argument on her behalf turned on the irregularity or default of notice at the early stage when the London and Westminster had to give it.

It was practically admitted, and, of course, could not be disputed, that if there was a slip, a blot, a break in the chain of notices anywhere, the defendant, as being a prior endorser, would be discharged, although she had, in fact, received notice of dishonour as early as she was entitled to it.

That was settled as long ago as 1821, in *Turner v. Leach.* And it is recognized by sec. 49 of the Bills of Exchange Act. Notice must be given by, or on behalf of, the holder, or by, or on behalf of, an endorser who, at the time of giving it, is himself liable on the bill. So, if there is a slip on the part of the holder, his notice is bad; it discharges the endorser or other party to whom he gives it, and such party being discharged, is a mere stranger, and can give no effective notice to anyone else.

And in the result Lords Justices A. L. Smith and Rigby decided in favour of the plaintiffs, the holders, while Lord Justice Collins differed, and held that the defendant was right, and ought to have judgment for her.

Let us just see how the matter really stands, and the views adopted on the different points by the Lords Justices.

It is clear that the bill, when dishonoured, was in the hands of the London and Westminster, as agents for collection. That brings in sec. 49, sub-sec. 13 of the Bills of Exchange Act: "Where a bill when dishonoured is in the hands of an agent, "he may either himself give notice to the parties liable on the "bill, or he may give notice to his principal. If he give notice "to his principal, he must do so within the same time as if he

"were the holder, and the principal, upon receipt of such notice, "has himself the same time for giving notice as if the agent "had been an independent holder."

Now, here the London and Westminster did not give notice to the parties liable on the bill, but they essayed to do so to their principal. Who was their principal? They received the bill for collection from the Cardiff branch of the County of Gloucester Bank. To whom did they send the notice by letter? To the Cirencester branch of the same company. But they telegraphed the next day to the Cardiff branch. Was this good enough? Lords Justices A. L. Smith and Rigby said it was. They treated the case as though the notice of dishonour had been addressed to the right person at a wrong address, and the mistake in the address had been rectified in time. Lord Justice Smith said: "It appears that the London and Westminster "Bank gave what would be a proper notice of dishonour to the "County of Gloucester Bank, though by mistake the notice was "addressed to the wrong branch of that bank. It seems to me "that we should be frittering away the provisions of the Statute "if we were to hold that a mistake in an address could not be "rectified, if the effect of the rectification is that the person to "whom notice is sent in point of fact gets notice in due course "and in due time." Lord Justice Rigby took the same line, urging that there was nothing in the Act which makes the address of the person to whom notice of dishonour is given an essential part of the notice. He said: "To hold that notice "directed to the right person, but sent to a wrong address "must necessarily be invalid, would be to go to an extreme "length, and make it appear that a right address is an essential "part of the notice. There may be no address, or the address "would not be material if a person carrying the notice with a "wrong address met the person to whom it was directed and "delivered it to him."

Now, unquestionably there is much sound common sense in this view. But the judgment of Lord Justice Collins is, albeit he takes a more technical view, so convincingly argued that I feel bound to say I feel sure it is the right one. Every point he makes is a good one. First, it is really not a case of notice being sent to the right person, but at a wrong address. It was

settled forty years ago, and recognized twenty years ago, that for purposes of notice of dishonour branches of a bank were to be treated as distinct persons. Therefore the Cardiff branch and the Cirencester branch, though both branches of the same banking company, could neither be treated as identical, nor as indifferently representing the parent bank. It was a fallacy altogether to treat the matter as if notice had merely to be given to the parent banking company, and such notice was merely wrongly addressed to the Cirencester branch. It was a confusion of ideas, and an ignoring of prior authority to treat the parent bank and its branches as if the parent bank was an individual, and the branches simply equivalent, say, to his town and country houses. As a matter of fact, notice to the parent bank at the head office would have been altogether irregular and insufficient. Next, the same confusion of ideas seems to have prevailed in the minds of the two Lords Justices as to the combined effect of the letter sent to the wrong branch, and the telegram sent to the right one. They treated it as if the telegram had in some way caught up the letter, and diverted it into the right channel. But, of course, nothing of the sort really happened. The letter went to one place, the telegram to another. And keeping in mind these facts, that the branches must be treated as independent persons, and that the telegram was not the letter, it is impossible to bring the case within the provisions of the Bills of Exchange Act. Bear in mind the dates. Bill dishonoured Saturday, *November 10th.* Sec. 49 says: "Notice "may be given as soon as the bill is dishonoured, and must be "given within a reasonable time thereafter. In the absence of "special circumstances, notice is not deemed to have been given "within a reasonable time unless, where the person giving, and "the person to receive, notice reside in different places, the "notice is sent off on the day after the dishonour of the bill, if "there be a post at a convenient hour on that day, and if there "be no such post on that day, then by the next post thereafter."

London and Cardiff are different places. Sunday, the 11th, under sec. 92, counts for nothing. Monday, the 12th, therefore, was the last day for giving notice. There is certainly a post at a convenient hour on Mondays from London to Cardiff. No notice was posted to Cardiff branch at all that day.

Now, the whole run of these rules as to notice of dishonour is one of extreme limits. Notice may be given as soon as the bill is dishonoured, and it must be given within reasonable time. There is no definition or even clear indication what is the proper time, but the greater must include the less. Notice given in writing or verbal, and received the day after dishonour must be good in any case.

But when you get outside this, you must bring the case strictly within the two sub-sections which specify the extreme limits. And the wording is noticeable. When both parties reside in the same place, notice must be given or sent off at latest in time *to reach* the proper person on the day after dishonour.

Where they reside in different places, the sub-section I have previously quoted marks the time limit. And the thing to be noticed is that this time limit is fixed by the *sending off* of the written notice. There is no extension of time for the giving of verbal notice between parties living in different places. The words "the notice is sent off" seem to me altogether inapplicable to verbal notice, especially when we consider the omission in this sub-section of the word "given" employed in the other.

When the parties reside in different places the date of receipt has nothing to do with the question under this sub-section, the whole thing turns on the sending off, "the notice is "sent off on the day after the dishonour of the bill, if there be a "post at a convenient hour on that day, and if there be no such "post on that day, then by the next post thereafter." As a matter of fact, it would be impossible to lay down any limit with reference to the arrival of the notice. It must depend on the distance between the two places, practically on the course of post. There are places in Scotland, say the remote islands, to which if a notice of dishonour were despatched by to-night's mail, it would hardly arrive by the end of the week, let alone places abroad.

I verily believe the Act intended to leave the question of time of receipt under this sub-section entirely to the post-office. See the wording of the sub-sections, and sub-section 14, where notice properly addressed and posted is to be deemed good, notwithstanding any miscarriage by the post-office. In fact, I think there are strong indications that the Act intended the post-office

to be the only authorized medium of transmitting written notice of dishonour between parties residing in different places. You know how jealous the post-office are of their monopoly of carriage of anything in the nature of a letter. It might well be argued that the Act only contemplated that method of transmission which is authorized, and involves no infringement of that monopoly. And another ground on which this view might be supported is that if any other method of transmission of written notice is permissible, there is absolutely no limitation as to the time which might be occupied in such transmission, or within which the notice is to reach its destination. If the London and Westminster had found out the mistake on the Monday, but too late for any post to Cardiff, and a devoted gentleman in that bank had volunteered to carry the written notice to Cardiff on foot, or on his bicycle, and had started with it in his pocket any time before twelve o'clock that night, I take it it would have been sent off in time, but the time of its arrival would have been somewhat problematical. Again, the post-office, so far at least, as the transmission of letters is concerned, has always been regarded as the agent of both parties. Once a letter is put in the post, it is out of the power of the sender, he cannot get it back, and though for some purposes it is treated during transit as the property of the Postmaster-General, for others it is treated as though it had already reached the hands of the receiver. And so these limits may have been fixed on the theory that on posting the notice you constructively give it into the hands of the receiver.

As Mr. Justice Wills said, in 1870: "The General Post "Office has been held to be the common agent of the parties "employing it. For that reason it is that a notice of dishonour "of a bill of exchange may be transmitted through the post."

Again the utilization of other means would lead on a strict construction of this sub-section to this curious anomaly. If there were a convenient post on the day after dishonour, the notice might be sent off by other means; if there were no convenient post that day, notice would be too late if despatched by other means, though it might be sent by the next post on the following day. The existence of the convenient post on the day

after dishonour is a condition foremost to the notice being good if sent off on that day. You cannot get out of this on the wording of the sub-section.

Still, as I say, there is no direct prescription of the post as the one and only means of transmission, and no direct prohibition of any other not infringing the post-office monopoly.

GILBART LECTURES, 1899*

No. IV

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

NOTICE OF DISHONOUR BY TELEGRAM

WE will now deal with notice of dishonour by telegram.

Lord Justice A. L. Smith says: "Speaking for my- "self, I think that the notice would be good if, on the day after "the dishonour of the bill, the person giving the notice were to "telegraph to the person to receive the notice in terms which "sufficiently identified the bill, and intimated that it was dis- "honoured." Lord Justice Collins said: "Within the terms of "the section that telegram was clearly not in itself a good "notice, and to this my learned brothers agree." So that I understand him as referring rather to the date at which the telegram was despatched than to any question as to validity of telegraphic notice as a whole. Mr. Justice Wills, in the other case I referred to, after saying that notice of dishonour could be transmitted by post, because the post-office was the common agent of both parties, continued, "That reasoning does not "apply to the Electric Telegraph Company," but I do not think he intended to lay down any rule. I think he was merely thinking of the difference between the Government department and what were then private enterprises.

WHETHER SUFFICIENT

Now is Lord Justice Smith right? Is a telegraphic notice of dishonour sufficient?

I put aside any question of time when sent off, at any rate for the present. Nor do I think it matters whether the parties reside in the same or different places.

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A telegram does not infringe any monopoly of the post-office; they own the telegraphs, and they make 6d. out of a telegram, and only 1d. out of a letter.

But does a telegram conform to the requirements of the Act ?

Section 49 (1).—Notice must be given by or on behalf of the holder or endorser.

3 (*b*).—The notice may be given in writing, or by personal communication.

49 (7).—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication.

49 (8).—When notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

By the Interpretation Section, written includes printed.

A telegram is not given by personal communication. Is it good as a written notice ? Is it given in writing ?

It is not a very easy question. The Act does not seem to contemplate a telegram by the way; it goes on talking of posts, addressing, posting, miscarriage of the post-office, and so forth. But if it comes within the terms of the Act it would be good.

The writing which leaves the sender's hands is not the writing which reaches the receiver's hands. It is not even on the same coloured paper. But I do not think that is essential. It is obvious it need not be in his handwriting, as it may be in print. The Act uses the word *given*, which seems to point to the sufficiency of its being in writing when it reaches the receiver. It may be given by or on behalf of the holder or endorser. So you may clearly employ an agent or a series of agents. It must be everyday practice to telegraph to your agent in another place to give notice of dishonour, and he might do so in writing. Finally, Chief Justice Bovill once held that a mere telegram, written out and signed by the telegraph clerk at the far end, in the name of the sender, would be a sufficient memorandum signed by the sender or his agent duly authorized in that behalf to satisfy the Statute of Frauds. And if it satisfies the Statute of Frauds, it must certainly satisfy the Bills of Exchange Act and us.

So I think telegraphic notice of dishonour is unquestionably good. I take it the whole chain of the young lady at the counter, who takes it in if she has nothing better to do, the transmitting clerks at each end, and the telegraph boy who takes it out at the far end, are all acting as agents for the sender, or on his behalf.

I do not feel at all sure that the post-office, in its telegraphic capacity, can be treated as the agent of both parties, as it is in its purely letter-carrying capacity. I do not think it is so. I do not think you could say that when you hand in your written form that writing was constructively and immediately in the possession of the receiver. I think a question might still be raised if you telegraphed at such an hour on the day after dishonour that the telegram was not received during office hours that day, and there was a convenient post between the two places that day. But where notice is sent and received on the day after dishonour, I have no doubt it is good, and that Lord Justice Smith is right in this respect.

I take it telegrams are usually confirmed by letter. That, no doubt, is desirable, but it must always be borne in mind that a confirming letter after the date limited cannot date back to the telegram. If itself out of time, you would have solely to rely on the previous communication. It is analogous to the other provision that an insufficient written notice may be supplemented and validated by verbal communication. That cannot extend the time for giving notice. If you gave an insufficient written notice on the day after dishonour, you could not, on the day after that, being the second day after dishonour, make it good notice by verbally adding to or correcting it.

I have told you knowledge of dishonour on the part of the person entitled to notice does not dispense with the necessity of giving formal notice. It is not included in the grounds on which the notice is excused, and has never been held to excuse it. But, of course, notice of dishonour may be waived in writing or verbally, expressly or impliedly, before the date of dishonour, or after failing to give it. The Act says so, and it had frequently been so held before the Act.

But, of course, the waiver by one endorser or the drawer,

only revives the right as against the person waiving. It cannot affect the discharge to which other parties are entitled by lack of notice.

RETURN OF BILL AS NOTICE OF DISHONOUR

There are one or two other very catchy little points about notice of dishonour. Section 49, sub.-sec. 6, says: "The return "of a dishonoured bill to the drawer or endorser is, in point of "form, deemed a sufficient notice of dishonour." This section was, I believe, enacted in order to validate a custom of collecting bankers, previously of doubtful validity; namely, the custom when cheques or bills paid in for collection are dishonoured, of merely returning them to the customer without comment. As collecting bankers you stand in the position of agent, and your customer in that of principal. Therefore, by the section to which I have previously referred, you can either give notice to the parties liable on the bill, or to your principal, that is, the customer.

You may be cognizant of the addresses of the parties liable on the bill or cheque, and may elect to take the course of giving notice direct to them.

It is clearly the duty of an agent, when more than one person is liable on the instrument, either to give notice to his principal, or else to all the parties liable on the bill, so as to safeguard the principal's rights to the uttermost, and the agent would unquestionably be liable for negligence if he failed to do so.

I do not believe the sub-section as to returning the bill was intended to apply to anything except the collecting banker returning it to his own customer. I think that is what was aimed at and intended by this section for several reasons. First, because it was the custom of collecting bankers to return the bill or cheque to their customer, which this section was intended to validate. Second, because the word "return" is most, if not only, appropriate to the operation of the agent's handing it back to the principal from whom he received it. Third, because of the impossibility of sending the document to more than one person, and the immense risk that would be run if the bill was sent to the last endorser (say), and the chance taken of his

passing on notice. Fourth, because if proceedings have to be taken by the customer on the bill or cheque, it is necessary he should be in possession of it, and it belongs to him, and you have not the right to part with it. Now these seem to me conclusive reasons, and if in any case you elect to give notice to the parties or party liable on the bill or cheque, it should be formal notice, and sent to all parties liable on the bill or to the drawer, if, as in the case of an ordinary cheque, he is the only person liable. Of course, your customer is not a party liable on the bill or cheque, though he has endorsed it, if it has been put in your hands merely for collection. If he has endorsed it to you to reduce an overdraft, or as a pledge, and you want to sue him on it, you must, of course, give him notice of dishonour, just as if he were a stranger.

But it is not in every case where you hold a bill or cheque as agent for collection that the return thereof to the customer is efficacious as notice of dishonour.

You see what the section says: "The return of a dis-"honoured bill to the *drawer or an endorser* is in point of form "deemed a sufficient notice of dishonour." As between the collecting banker and his customer notice of dishonour is an anomaly altogether. The banker never has, and never contemplates, any right of action against the customer; the only *rationale* of his giving notice is under sec. 49, sub-sec. 13, to which I have referred.

A very large proportion of bills, and nearly all cheques, are collected through bankers, and it is obviously impossible that bankers should know the addresses of all the parties on the bills and cheques paid in to them by their customers for collection, and if they did it would be unreasonable to impose on them the necessity of giving such a multitude of notices of dishonour. And so for their benefit, more than that of any other agents, this sub-section was enacted, which gives them the alternative of giving notice to their principal. But the doing so involves a delay in the notice reaching the persons really liable on the bill or cheque. That is recognized and provided for by this same sub-section. "If the agent," it says, "gives notice to his "principal, he must do so within the same time as if he were

"the holder, and the principal, upon receipt of such notice, "has himself the same time for giving notice as if the agent had "been an independent holder."

And I take it the result is this. The principal and the agent, the customer and the banker, being put for their own convenience in the position of independent holders, must accept the responsibilities of that position. They cannot say they are independent holders for one purpose and not for others. And so if notice of dishonour is not given within the specified time by the agent to the principal, by the collecting banker to the customer, a drawer or prior endorser would be discharged. As we saw, that was recognized in that case of *Fielding v. Corry*, where the London and Westminster gave notice to the Cirencester instead of the Cardiff branch.

And besides being given within the specified time, the notice of dishonour given by the agent to the principal, by the banker to his customer, must be a proper and sufficient notice of dishonour. The sub-section about the return of the bill being sufficient, was, as I told you, introduced to confirm a custom of bankers, and to facilitate their work. But, of course, you must take the concession with the limitations imposed upon it. And whether intentionally or not, it certainly does not cover all cases. It does not say the return of a dishonoured bill by an agent to a principal, or by a banker to his customer, is in point of form deemed a sufficient notice of dishonour. It says the return of a dishonoured bill to "the drawer or an endorser." So that if you have for collection a bill or cheque which either originally was, or by general or blank endorsement has become, payable to bearer, and on which your customer is neither drawer or an endorser, the return of such bill or cheque to him is not a good notice of dishonour, and if such were the only notice of dishonour you gave him, the parties really liable on the bill or cheque would be discharged, and you would be liable for negligence. It is only when your customer figures on the bill or cheque as a drawer or endorser that the return of the dishonoured instrument is of itself deemed sufficient notice of dishonour. I cannot say I see the exact reason or ground of this, because the character of the customer as drawer or endorsor has no reference to the

banker where he is merely collecting, the bill being merely endorsed for collection, but there it is, and the wording is beyond dispute.

GUARANTEES

I now come to my last subject, that of guarantees.

Guarantees have always been rather a favourite subject of mine.

My very first connection with the Institute of Bankers was when, many years ago, I wrote an article on guarantees for the *Journal*, and I believe I dealt with the same topic, though briefly, in my first course of lectures here. And they are rather fascinating things. They are so tricky, so technical; a very slight and apparently immaterial divergence in wording will so entirely defeat their intended object.

CONTINUING GUARANTEES—STATUTE OF LIMITATIONS

Now, of course, one of the main divisions of guarantees is into continuing and non-continuing guarantees, and some subtleties have crept in with regard to the language which determines this classification, though it is not difficult to choose words putting a guarantee intended to be continuing well on the right side.

There has recently, however, been a decision which has disturbed preconceived views on the subject of continuing guarantees, and which, if correct, introduces another element of danger. It runs counter to the view I took in the article I referred to, and which I repeated to you here, and therefore I feel bound to go into it and consider whether I shall retract what I have previously said, or whether I shall adhere to it.

Now, the point arises on the question of the action of the Statute of Limitations on a continuing guarantee, a continuing guarantee in the fullest sense of the term. The case was that of *Parr's Banking Co. v. Yates*, and was decided by the Court of Appeal on July 4th, 1898.

A continuing guarantee was given to the bank by the defendant Yates, to secure the overdraft of a customer of the bank, named McLaren. It was in the regular and proper form of a continuing guarantee, guaranteeing due payment and satis-

faction of all moneys and liabilities that might have been, or might from time to time be owing to, or incurred by, the bank in account with McLaren, with interest and charges, and expressly stated that it should be a continuing guarantee, but that the amount ultimately recoverable against the defendant should not exceed £1,000, with interest from the day on which it should be demanded until paid. It was given in February, 1887, and from that date down to 1890 the bank made advances to McLaren by letting him overdraw, and he paid monies in from time to time, though the balance was always against him. On December 31st, 1890, the balance against him was £3,247 odd. No further advances were made to him, but he continued to pay money in down to March, 1897, and the bank each half-year went on as they had been doing, debiting the account with interest and charges.

On June 30th, 1897, the amount owing by him to the bank was £1,979 1s. 6d.

On September 3rd, 1897, the bank brought this action against Yates, the guarantor, for the £1,000. And the Court of Appeal, reversing the judgment of the Judge who tried the case, held that the bank were not entitled to recover anything from the guarantor in respect of the sums advanced by them to the customer by way of overdraft, their right of action in respect thereof being barred by the Statute of Limitations. They held the bank only entitled to recover the interest which had accrued within six years of the commencement of the action, which was poor consolation for the bank. It was never suggested on behalf of the defendant that any demand for payment had been made by the bank, either on him as guarantor, or upon the principal debtor, the customer, outside the period of six years, or indeed, at all.

Now, that is somewhat startling. More startling still is the line adopted by Lord Justice Vaughan Williams, who said: "My view is that the cause of action on the guarantee arose as "to each item of the account, whether principal, interest, com- "mission, or other banking charge, as soon as each item became "due and was not paid, and consequently the Statute of Limi- "tations began to run in favour of the defendant in respect of "each item from that date."

And Lord Justice Rigby says what I think is meant to be the same thing. He says: "As to all the items of charge down "to a period of six years before the date of the writ, it is clear "that a right of action had at that period accrued to the plain-"tiffs upon the guarantee. That they did not choose to exercise "it is immaterial. The right of action had then accrued, and "the action in respect to those items is barred by the statute, 'because the cause of action did not accrue within six years "before action brought."

From the way both Judges speak of items, not of any balance, it is evident they mean that in respect of every separate overdraft an immediate cause of action accrued to the bank, both against customer and guarantor, and that the six years' statutory period began to run against the bank in favour of both customer and guarantor in respect of each such overdraft or item from the moment the cheque for such overdraft was honoured.

Now, is that the correct view to take of the matter? No doubt it was an unusual course for the bank to let the whole matter stand over for six years from the last advance, but they were being paid off occasional sums, they were charging interest, and doubtless relying on their guarantee, and very likely had other good reasons for the course they adopted.

In the article I wrote, and, I think, when I spoke to you, I said, in dealing with this question of the Statute of Limitations and continuing guarantees, that I did not believe the statute began to run until there had been a balance struck, the account closed, and a demand made on the principal debtor and guarantor, or at least one of them, for payment.

And there is authority for that position, authority on which I relied, and which I quoted, but which does not seem to have been referred to in the recent case.

Hartland v. Jukes was a case decided in 1863 by a strong court of three Judges.

There, a promissory note, payable on demand, was given jointly by one Steward, whose executor the defendant Jukes was, together with one Courtney, to the Gloucestershire Banking Co., who by their public officer were the plaintiffs in the action. Steward and Courtney at the same time signed and

gave to the bank a memorandum to the effect that the promissory note was given as collateral security for a banking account to be opened by Courtney with the bank, and such memorandum contained terms making the security a continuing one. That was in 1855. On December 31st, 1855, Courtney was indebted to the bank £179 odd. No claim for payment was made, and no balance struck till June, 1856, when £194 5s. was the balance due to the bank. Balances were afterwards struck every half-year, further advances made, and monies paid in, amounting to more than the amount secured by the note, till in February, 1861, the account was closed with a balance due to the bank of £172.

Defendants, as representing the guarantor, were called on to pay, and not doing so, the action was brought in March, 1862, more than six years after the date of the note.

The Court said the note and the memorandum must be read together, so that the two together had the effect of a continuing guarantee for £200, the amount of the note.

The Court decided in favour of the bank, and in their judgment they say as follows: "The question is, when did the "cause of action accrue? And unless it accrued before the 2nd "of March, 1856, the statute is no bar. It was contended "before us that the statute began to run from the 31st of "December, 1855, by reason of the debt of £179 1s. 11d. then "due from Courtney, the customer, to the bank, but no balance "was then struck, and certainly no claim was made by the bank "upon the defendant's testator (that is, the guarantor) in respect "of that debt, and we think the mere existence of the debt, "unaccompanied by any claim by the bank, would not have the "effect of making the statute run from that date."

No doubt the two cases differ somewhat in their circumstances. In *Hartland v. Jukes* no balance was struck till within six years of the action. In *Parr's Banking Co. v. Yates* a balance was struck every half-year. In Parr's Banking Co. no further advances at all were made to the customer within the six years preceding the action, and though he continued to pay in money, the balance was throughout the whole account, from start to finish, against him. In *Hartland v. Jukes* advances were made within six years before the action, and amounts paid

in during the same period by the customer, which more than covered the amount of the guarantee. But it is with the principle that we are now concerned, and I must say that the two judgments do not seem to me reconcilable.

I do not want to force the judgment in either case beyond its proper limits. I do not think, for instance, that it would be fair to interpret the recent judgment of the Court of Appeal as implying that no continuing guarantee can ever be effective for more than six years, by reason of its dating from the very first overdraft or advance, nowithstanding that overdraft or advance may have been covered many times over by payments in. It might be contended that was the result of Lord Justice Vaughan Williams' judgment, but it would be too unreasonable.

But the judgments do involve this, that the mere existence of a debt, an overdraft by, or advance to, the customer, constitutes an immediate right of action against the guarantor, independent of any balance being struck or the account closed, or any demand made on anybody; and that, subject to the question of subsequent payments in, this is the date you must look to in calculating the effect of the Statute of Limitations. That is directly opposed to the judgment in *Hartland v. Jukes*, which expressly laid down that the mere existence of a debt, unaccompanied by any claim by the bank, would not have the effect of making the statute run from that date, involving the further proposition that the mere existence of such debt does not, in such circumstances, give rise to a cause of action against either customer or guarantor, because if such cause of action did exist, the statute would infallibly begin to run.

Now the general law seems in favour of the later decision.

RIGHT TO DEMAND OF PAYMENT

The relation of the guarantor and the customer is that of surety and principal. And I find it laid down in law books as follows:—"A surety is not entitled to a demand for payment "upon the default of the debtor, or to notice of the default, "unless he *has expressly stipulated* for it; and in order to charge "a surety upon a contract of guarantee, it is not necessary to "make a demand upon the principal debtor, unless such

"demand is necessary to charge the debtor, or unless the "surety has expressly stipulated that such demand shall be "made."

I will assume all this to be true as a general proposition. If you guarantee the payment of a specific debt at a definite date, it may very possibly be your duty to see that it is duly paid at that time. And if that is your duty, no demand either on you or the principal debtor may be necessary to found an action. And if action can be brought without any such demand, I suppose the Statute of Limitations would begin to run from the date when payment should have been made. But I cannot help thinking a continuing guarantee stands on a different footing. If it does not, the decision in *Hartland v. Jukes* seems inexplicable. In another case of a continuing guarantee, *White v. Woodward*, in 1848, it was contended that the guarantor had no notice of the supply of goods to the person whose debt was guaranteed, and no notice of non-payment by him; until the demand for payment was made upon him, the guarantor. It is true that Chief Justice Wilde said: "The defendant was *ipso* "*facto* liable upon the other's failure to pay," but in his judgment he said that if there was any matter of discharge arising from want of notice or otherwise, it ought to have been properly set up, showing he was not very confident of his earlier opinion. And in that case there apparently was a demand from the guarantor before action.

I must also admit that in late cases where a guarantor has covenanted by deed to pay on request, the necessity for a request has been based on the presence of those two words "on request."

But now fortified by *Hartland v. Jukes*, let us look at the matter of a continuing guarantee given to a bank for advances or overdrafts from a business point of view. What is the object and intention of the parties? Surely this, that the customer shall obtain an effective working credit, that the banker shall get a profit out of the money lent by charging interest upon it, and that the guarantor shall ensure, within specified limits, that the banker shall not be a loser by the transaction. The guarantee itself recognizes this by provisions as to interest and charges.

Now we are told in this late case of *Parr's Banking Co. v. Yates* that under a guarantee like this, the moment an overdraft is allowed or an advance made, a right of action accrues to the bank against both customer and guarantor; that is to say, that the bank could within an hour issue a writ against both parties for the amount of such advance or overdraft, and that neither of these parties would have any defence to such action. I must say that is startling. It absolutely ignores the idea of an effective credit. The customer might want the money for some pressing temporary purpose, either to tide over some difficulty or to take advantage of some exceptional opportunity; and the whole object of the transaction would be defeated, if the money could be thus at once called in, the whole business efficacy of the arrangement nullified. No doubt it would be said that the customer and the guarantor might and ought to have stipulated for a definite period within which the credit should not be called in; no doubt reliance would be placed on the undoubted fact that in ordinary cases a debt is recoverable at any time, that if, for instance, a tailor sends you home clothes, he can follow it up with a writ for the price the next morning.

But is not the case of a purely business transaction like this somewhat different? May we not invoke that doctrine of implied contract in this instance? Considering the terms of the contract in a reasonable and business manner, does not an implication necessarily arise that some substantial credit was to be given? Must not the parties have intended some such stipulation? Is not such implication necessary to give such business efficacy to the transaction as must have been intended at all events by both parties, who are business men? These are the various tests which have been laid down, and does this case not fall within them?

Of course, I see the objections that can be raised. The first would probably be that the term of credit would be uncertain; is it to be for a month, six months, or what? No doubt that is a difficulty. I can only suggest that the credit should be a reasonable one, a real effective business credit, or that it should involve its not being called in except on reasonable notice, so as to give the parties time to look round for another loan. Then it might be said that such implied contract contradicts the

written one. But there is no written contract between the customer and the banker, and the term might therefore be implied as between them; while the guarantor is only bound to answer for the debt or default of the principal debtor, and if the implied term imported a period of credit between the banker and customer, there would be no debt or default on the part of the latter until it had expired, the money would not be due from him, and there would not be anything for which the guarantor could be called upon. Then the words of the ordinary guarantee seem so to point to the idea of some efficacious extension of credit, that the contradiction is not in any event a violent one. "In consideration of your giving credit," "coming under "advances," or words to that effect, and the provisions as to interest would almost suggest that the contradiction lay rather in saying that every advance or overdraft constituted an immediately recoverable debt against customer and guarantor, than in adopting the view which I am laying before you. And if contradiction or discrepancy there be, may we not adopt the view of Lord Halsbury, when he said: "One must reject words, "indeed whole provisions, if they are inconsistent with what one "assumes to be the main purpose of the contract." I know the case in which that expression was used was an exceptional one, practically of contradictions in the same document, but the words themselves are not limited.

Lastly, in *Hartland v. Jukes*, the words as to repayment at any time were a good deal stronger and more specific than they were in *Parr's Banking Co. v. Yates*. They were contained, as I told you, in a memorandum, and there was also the promissory note payable on demand, signed by the guarantor as well as the customer, a document whose existence might be said to emphasize the fact that any advance which afforded consideration for the note was immediately recoverable. And yet in that case the Court held, as I have told you, that the mere existence of the debt, without the striking of a balance, the closing of the account, and demand made on customer and guarantor, or at least on guarantor, did not constitute a cause of action or set the Statute of Limitations running.

So there the matter stands. I am afraid that if the two cases ever came to be quoted one against the other, *Hartland*

v. Jukes would have to give way to *Parr's Banking Co. v. Yates*, the latter being a decision of the Court of Appeal, and so I suppose for the present we must treat it as the ruling authority, and say that no demand is necessary, and that the statute begins to run against the banker in favour of the guarantor from the date of the overdraft or advance, with the corollary that the banker on an ordinary continuing guarantee is at liberty to sue for such overdraft or advance, either the customer or the guarantor, within twenty-four hours or less after he has granted it, which neither seems common sense nor business, or a privilege of which bankers are likely to avail themselves.

I cannot say, however, I am quite convinced, and if I am, it is against my will, with the well-known consequences of such conviction.

But as the Statute of Limitations has thus become a more important factor with regard to continuing guarantees, just bear this in mind, that no payment on account of principal or interest by the customer, the principal debtor, bars the statute or keeps the debt alive against the guarantor, the surety. In *Parr's Banking Co. v. Yates* there were payments in by the customer down to within six months before the commencement of the action against the guarantor, and yet the latter obtained the benefit of the statute. And, of course, that is so. The efficacy of any payment or any acknowledgment is that by recognizing the debt it raises an implied promise to pay it or what is left of it, and so you get a fresh start on that promise for another six years. And so any acknowledgment or payment must either be made by the debtor himself or some duly authorized agent on his behalf.

Part payment or acknowledgment by a stranger cannot found a promise on the part of the debtor. It used to be held that payment by one co-contractor barred the statute as against his co-contractor, such co-contractors being regarded as mutual agents, but that was done away with by the Mercantile Law Amendment Act, 1856. Partners can bind one another in this way, because they are ostensibly mutual agents. But principal and surety are not agents for one another, therefore part payment or payment of interest or acknowledgment by one of them has no effect in keeping the debt out of the statute as against the

other. Even if they are looked on in the light of co-contractors, as where they may have given a joint or joint and several promissory note as security, the Mercantile Law Amendment Act of 1856 hits the case, and prevents one binding the other so as to bar the statute.

And so it comes about that no payment in by the customer is of any avail to prevent the statute running in favour of the guarantor.

OPENING A BRANCH BANK*

THERE is an announcement to be met with from time to time in the advertising columns of the daily prints which has more significance to some persons than to others. It is of interest to bankers, because it speaks of extension and expansion of business, of keen competition, and, it may be, of opposition, in a field which one bank deems to be all its own. The public are also interested within a given area, because the range of banking possibilities might thereby be widened, and loans which before never got beyond the application stage might find full fruition under the newer conditions. The announcement round which all these expectations revolve runs in these terms: "A branch of this bank will be opened at . . . on . . . under the charge of . . . " Whenever a notice of this character appears, it naturally calls up curious feelings in the breast of those who have had in the past a branch opening experience. A nigger was once tied to a tree which was set on fire so that he might be consumed along with it. He managed to escape, however, by freeing himself of his fetters. On his way home, someone asked him if he had seen the fire. "Oh, yes! I was dar!" was his reply. Similarly, one who has done duty as a banking pioneer can say that he has been in it, and of it, when he hears of new pathways being opened up. He has a fellow-feeling for all such explorers, no matter whether the field lends itself to exploration or not. That is not his concern—the mere fact that a new field of operations is to be undertaken, rouses and calls anew into being the old line of sensations which were experienced when first he essayed the same task of breaking up fallow ground for his own bank.

It may be asked how banks come to fix upon particular spots for planting new branches. More commonly than not the

*"Banker" in the *Bankers' Magazine* (London) Vol. 68, p. 376.

applications for such agencies have come, in the case of Scotch banks, from outside sources, from lawyers, as a rule, who have represented that they would be able to do so much deposit business if only they had the chance; that there was a field for operations; that they had wide connections, and would be well supported. Such representations are all carefully enquired into, also the population of the place, its trades and industries, and the prospects of business being obtained in sufficient quantity to justify the establishment of a branch there. Undoubtedly the influence of persons connected with the bank would go for something if that influence were exerted in the belief that such a piece of business would pay. But it may be mentioned that the banks prefer to keep their branch agencies for their own employees when they can fairly do so. An agency is the reward to which a junior in time aspires, and if he is passed by for an outsider he naturally feels it bitterly. It is safe to say that the outsider is the exception, and for many reasons. He does not know the routine of banking business, and his own affairs naturally get primary attention. He may not be a man with a lot of irons in the fire, as the phrase goes, and thus be able to devote more time to learn his task; but he is often chosen because he has so large a business and can influence so many persons. His clients are thus numerous, and much money passes through his hands; he holds so many offices, moreover, that the bank gladly accepts him, because of the power which he wields. He has not to wait for years to form a connection; he has one ready made; and herein lies his superiority over a banker who is a stranger to the locality and people when it comes to be a matter of opening a new branch.

Some time ago one of the banks resolved to establish an agency under my care in the heart of a certain large city. Though the years have fled since then the memory of it is as fresh as ever. I may say that I possessed no knowledge of the locality when the new agency was entrusted to me—and it may parenthetically be stated that the business of a bank depends on the kind of spot where its lot is cast. You may have an aristocratic neighbourhood, where ladies drive up in their carriages to the bank, and in graceful toilettes, and aromatic of delicate perfumes, receive the tactful attention which their station demands.

You are careful to give them the newest gold or the cleanest notes in an envelope, because you instinctively know that they like it. They thank you with a gracious smile, and bow as they sail out of the telling room. Readers of the *Bankers' Magazine* may remember an article by Mr. May on the Bank of England, in which he mentions the case of a lady who was once so charmed with the polite attentions of one of the bank's tellers, that she some days afterwards quietly passed over to him at his desk a diamond pin, carefully wrapped up in paper, and then glided out of the room before he could examine the gift or even open the parcel. The chances are that this kind of branch has professional men doing business with it, the trading element not being strongly represented. It is thus a matter of clean transactions as they are termed, in which money is paid in from cheques on other banks—the one balancing the other. This class of branch is typical of the West End, where there are large sums at credit on accounts giving little trouble in the keeping of them.

If the opposite type be taken in a democratic locality, then the bank's counter will tell its own tale. Small notes, silver and copper, will litter the telling table, and on the floor will be seen any amount of paper, string, and burst bags as the *detritus* of democratic transactions. The locality can be taken in at a glance, with its numerous small shops, its manufactories, and its working-class population. Then there is the villa, or suburban class of branch, with its well-to-do population, whose banking needs are not of daily occurrence, like those of the trading class. They draw their incomes at stated times and pay their accounts at fixed terms. They work with the regularity of a clock, and thus they do not severely tax the powers of banking. Of course, along with this suburban or residential locality, there is the inevitable trader to supply the population's wants as they arise. But for all that, the branch's main customer is villadom, which elects to live elsewhere than in the locality in which its business is conducted. There are also the manufacturing and the shipping, the agricultural and the farming branches. These have their own peculiar ways—some having a staple trade, which, if it goes wrong, upsets the whole place. There are also the ups and downs of agriculture, the uncertainties of the potato crop,

for example, the fluctuations in the price of grain, all which spell failure or success, as the case may be.

But putting aside this parenthesis, let me hark back to the fact that an appointment to a new agency was conferred on me. It was the first promotion of the kind which I had received. You have heard of a school being let loose for their summer holidays, a business man starting for a month's holiday abroad, or a scholar receiving a much-coveted prize. All these emotions boiled down to a quintessence give some idea of the feeling which I had on the occasion referred to. I do not go so far as to say that it exceeded the rapture of "the first kiss of love," about which Tom Moore poetized so ecstatically. But even the ardour of the warmest feelings abates in time when idealizing comes to an end. I remember a country parson telling me how brightly he had clothed his ideals of clerical life and his dealings with his flock. He would go in and out among them rightly dividing the word of life, and spending and being spent in their service. Yet how little sufficed to shatter many of his preconceptions of things: the perspective had to be changed from the ideal to the real, for men cannot always be regarded as trees walking, and things are not what they seem.

Beginning to reckon up how other agents had acted, I mentally recalled one who could not stand the strain of the loan department. He did not seem to be so constructed as to regard unsecured overdrafts with equanimity. Under the process of keeping daily and even nightly watch over them—for he came back in the evenings to pore over the accounts—his nervous system got terribly enfeebled; he could not sleep; and he was obliged to throw up the post after a comparatively short trial of it. Yet he did his best to keep it, being one of the most conscientious of men—a perfect model in that respect. It is strange that one should look at the least representative members of the profession at such a time, yet so it was. Then I reflected on another type of agent under whom I had served at a very early stage of my career. He, too, had not been fortunate, but in a different manner altogether. He had not fallen off at the outset—He had continued to run till his retirement. His experience of bad bills was such that he told me his hair had

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turned grey in a single night, reminding me of Byron's opening lines in "The Prisoner of Chillon"—

> My hair is grey, but not with years,
> Nor grew it white
> In a single night,
> As men's have grown from sudden fears.

These losses had sorely tried my old master. I remember well the numerous payments to account, which were entered in the neatest way by a clerk who has now been dead for years. The dividends seemed to come in driblets from the different estates, for it was a mixed-up business altogether. I rather think there was some forgery in the affair, but I was too young to be told much about it.

Some other agents came into view more nearly approximating to my present position, men who had opened branches *ab ovo*, if one might so speak. These were the persons, men of great activity, with whom I was to compare myself, and to run a race with, only *longo intervallo*. They had had their innings and had done well. I was only handling a bat for the first time, and might be stumped before I had made many runs. Then, as I fancied, they had begun on virgin soil, whereas the field on which I was to operate had been already tilled for some years by a rival establishment. One is always apt to load a comparison against oneself and to put all the advantages on the side of another. General Grant used to be constantly twitted with having against him so strong an antagonist as General Lee, but he consoled himself by the reflection that if he made mistakes, so did General Lee. I believed that I had a heavier handful than my forbears, because the natural growth of population and trade was in their favour, whereas I could only get a share of it. But whatever thoughts may have passed through my busy brain of this kind, they only served to sober me to the work I had got to do—to take a more serious view of what was expected of me. As an agent remarked when he came to visit me, and who had the same task on hand as myself:—"It won't do to sit down on a chair in an agent's room and expect that everyone will fly with business to you—it's a case for exertion, and a man should do something for his salary." Activity must be used, but in what direction?

When a new agent is appointed, insurance companies swoop down upon him and invite him to represent them. The primary object of the former, however, being to get business for his bank, he does not solicit insurance orders, unless from friends. These come in, all the same, with the advent of customers, the one leading to the other. New agents are sometimes puzzled in this way—they get deposits placed in their way if they can influence life assurance business, but on the other hand they have agencies already; so the question is what to do with the limited insurance business at their disposal. The likelihood is that the deposit-bribe carries the day with most new agents. It is wonderful how much insurance business is done by agents even without solicitation. Their customers approach them on the subject, no doubt from seeing the show-boards and other signs of an agency in the bank office. If a brass plate is on the bank door outside then persons are attracted inside who are wishful to do business, more frequently, perhaps, fire insurance; but so long as they are brought within, that is always a chance to a new agent.

It looks a tiresome and trying matter hanging on for the customers who never come. Micawber-like, the new agent waits for something to turn up in the deposit line. There is a monument erected to the soldiers of a Highland regiment who fell at the battle of New Orleans. What makes the event memorable is the fact that they were never called into action—they were a reserve waiting to be led against the enemy, but in this passive condition they fell; and how trying and cruel a condition that is, only a soldier can tell! It is not pleasant to play the waiting game even in banking—one longs to try issues and to effect business by making influence converge on it. However, banking is not yet like trading, or at least was not, when I assumed charge of a branch. I was strictly enjoined not to canvass, for to the credit of the Scotch banks be it said that they do not encourage but rather set their face against the direct solicitation of accounts. Any cases of such were, at the time I speak of, brought up against the agent so canvassing before his head office superiors. There is a great temptation to a new agent to do business at any cost, and in any way, and self-restraint is very needful at this early stage. Dignity and

duty to the bank demand that he shall not act as a solicitor-general or commercial traveller.

There was once an agent who opened a branch for a certain bank in a shipping centre. It was marvellous how he succeeded. In a short time he had collected £40,000 of deposit-money, and everyone wondered at his industry and ability, but alas! in addition to getting this goodly sum he had contrived to lose £20,000 of the bank's money, and he had to make a hasty exit from the scene of his brilliant labours. In agricultural districts opened up for the first time, a new agent has been known to drive about from farm to farm, and by his easy abandon and frank manners so ingratiate himself in the bucolic breast as to bring the dollars out of the latter's pocket. Of course all this involved the exercise of a certain amount of conviviality, and perhaps laid the foundation, in some cases, of habits which the agent would have been better without. Then in towns business has been sought through the medium of the bottle. Some agencies have been built up in this way, but at the expense of the agents themselves. Not infrequently the latter have had to leave the service, and though they may be said to have succeeded so far in business, they cannot be said to have succeeded in life. Thus the process and the methods of getting business must be taken into account, for the representative of a bank, in pursuing reprehensible methods, demeans himself and lowers the standing of his bank.

I recall what I was told once as to how a financial worthy used to exploit his agency. He would give pies and porter to coalmen and carters to get their money from them. In particular, he once boasted of going through a village of piggeries and cow-feeders, and doing a good day's work in the way of getting deposits and insurance business as well. Some persons had to be treated in a neighbouring public-house. This same agent would, it is said, even try to get business from the lessees of licensed houses by partaking of their vintage more or less freely. From other persons he would solicit business, even though he knew that they dealt with banks in the same locality as his own establishment. No doubt he felt anxious to do a stroke of business for his bank, but his zeal outran his discretion. The chances are, too, that when one goes a begging for business he is apt to

be caught. If an account is solicited, the holder of it will feel himself entitled to ask favours at the hands of the person who sought it, and it is usually the risky accounts which are transferred in this way.

Impecunious persons think a new branch a place specially opened for their behoof, and they fly to it in the same way that the non-paying class of clients resort to a new doctor. These folks have no bad record with a new man—they have a clean bill of health in so far that they are unknown, and have created no prejudice against themselves. One of this fraternity of good borrowers and bad payers came once to a bank and paid into an account which he wished opened in his name a paltry sum, thrusting across the counter along with it a bill for a trifling amount. He asked at the same time for a book of cheques, which was not handed to him. The bill remained with the bank till the following day, when the new account holder asked that it be discounted. This the agent did not see his way to do, and handed him back his document, accompanying it with the expression that he would doubtless want his money as well. With that a cheque was made out, which he signed, and the amount was paid over to him of his deposit of the day before. In this way he was got rid of, though, strange to say, he returned asking pecuniary assistance again, but in vain. Then some pseudo-employer has been known to come asking a loan to pay wages to his men. The loan was refused, and the discovery made that he had no men, and was, moreover, steeped in debt.

Ladies will occasionally pay a visit on borrowing bound. The struggle to live is great when persons are forced by circumstances beyond their control to approach utter strangers and solicit loans without security. It is impossible not to sympathise with such folks, even when one is compelled not to entertain their requests. A lady once came with a tale of furniture about to be sold off; she valued it highly as it had been left to her; the house where it was had been let by her in a furnished condition to a stranger, who could or would not pay the rent, and the landlord was bent on selling it, as he had a hypothec over it for the rent, which was not forthcoming. She urged that if the money were advanced it would be refunded, that there was no danger, and that it was only a paltry sum. Of course such an advance could not be granted.

A more interesting request was that of a young lady who had to support herself by such work as gentlewomen undertake of an intellectual character. She had tried the role of an author, and in connection with her first literary attempt had asked an advance. Taking out rolls of proof of her first novel, she also produced a letter from certain publishers accepting the MSS. for publication. A letter from the firm's "taster" was also shown, in which he objected to certain phrases of an *outré* character. This novel, or rather her rights in it, were offered in security for an advance. The crux of the matter was the terms made by the publishers. These turned out to be that the author was to receive nothing till the first edition was sold out, and as this edition numbered 2,000 copies, the chances of a new novel running off soon were rather remote. The security was thus too flimsy to be thought of; so when she was told that to advance money on such conditions would be benevolence but not business, she replied that she did not want benevolence. This attempt to raise money on fiction reminds one of the Constables' (publishers) vain efforts to pledge Sir Walter Scott's future productions with the Bank of England against an advance in cash.

If it were asked what a new agent ought to do to obtain business, the reply likely to find most acceptance would be that he should sit remorselessly at the receipt of custom. There is a great advantage in being on the ground when anything is wanted, and the bank office is the natural place for an agent. He has scope there to ingratiate himself with the strangers who enter his bank, and to make friends generally. On the other hand, the more he is known the better for himself, as the unknown is not always taken for the magnificent. If, therefore, his business lies in a locality where he does not personally reside he may be able to get introductions during the day which he could not well get at another time. A large acquaintance is, therefore, desirable in the interests of the bank, as it is a channel for the flow of business.

It is said that business discards localities, and that in short persons choose places where they can do business with most advantage to themselves. Distance does not deter in such cases. Many bank accounts are opened in parts remote from

the business or private residence of the holders of them. The personal charm of the agent has perhaps attracted customers from afar, or the facilities he has been able to offer have acted as an inducement to them to put business in his way. A curious valuation is frequently put on life policies by clients soliciting an advance. They seem to think that a policy is worth its face value, and that they should at once get a loan on it to that extent. It is difficult to convince even some professional men, who ought to know better, that such is not the case. They say they are certain to pay the premiums so long as they live, and therefore the policy amount would be duly paid at maturity. You tell them in vain that the policy is only worth its surrender value, roughly estimated at one-third of the premiums which have been paid upon it. Of course if they furnished guarantees for the payment of the premiums and interest on the advance, the case would be different. But that is not their proposal, which is to get the full face value of the policy on assigning it to the bank.

When a person comes about a new branch repeatedly in the way of business, it is not unusual to ask him to open an account, if it is conjectured that he has none. It is related that a man was thus solicited in a quiet way, and the answer he gave was rather a curious one, reflecting as it did on the banking profession. He said that he had once kept an account with a bank branch, which he named, but that he had ceased to keep it for the following reason:—Being one day in the bank, he met a friend of his, and had a chat with him. A few days after, this friend asked him to be surety for him in the same bank to the extent of £100, or some such sum. He did so, the result being that in the end he had to pay the amount in his quality of surety. It seems that the banker had been casting about in his mind for someone to act in the latter capacity, and when he saw the two talking together, he remembered that the one man's account was as much creditor as the other's was debtor. He, therefore, dropped the suggestion to the latter to ask his friend to "stand in" for him. This he did; but when he discovered, as he ultimately did, whose suggestion it was, he discontinued doing any banking business ever after, and says he won't trust a banker again. Such was the man's story, and it may be taken for what it is worth.

A common way whereby business is brought to a new bank is by persons speaking a word on behalf of the agent. They can do this disinterestedly, and it has more weight accordingly. It is said of doctors especially that their business, when they are unknown, arises from one person recommending them to another, and so on till a wide circle is reached, and a good practice established. A banker may not have the same field for the exercise of his skill, but he has a certain power of giving accommodation, and a good manner is as much valued in a banker as in other professional men. Often, it may be, by a very circuitous route one must travel to reach one's goal. In the case of a banker struggling to get business, he has to play something like a game of billiards; he has to reach his purpose by a lot of cannons, which are taken all over the billiard table—he cannot always put his ball in the pocket with the first stroke.

Attention to even the pettiest wants of customers or strangers, and an obliging disposition at all times, are the most reliable instruments for the inbringing of business. The power of littles is never so effectively displayed as here. One has to sow seed for years, it may be, before one can reap. Some bankers decline to give change unless the persons asking it deal with them. This is a mistake, because in time persons, whose servants come for convenience to the nearest bank, may take the fancy to change their bank. Small attentions are always valued, and the cumulative effect of them is considerable. "Despise not the day of small things" is a wise saying, especially for a banker beginning business. If he casts his bread on the waters, he may find it after many days.

There are some strong advocates for Freemasonry, who say that it will help business to join it. It is difficult to say how it will do so, save so far as giving a kind of ready-made introduction by means of unknown signs and symbols to persons one could not otherwise—at least so readily—get acquainted with. Undoubtedly, the wider the acquaintance and the larger the connection, the better it is as a lever for getting business. The more numerous the persons who speak well of one, the greater is the chance of business being brought in his way. And as health makes health, and money makes money, so does business make business. Taking the department of loans, a customer

who has been satisfied brings back a friend, whom he introduces forthwith to the agent as a person desirous to do similar business. This is the method in which loan business is usually begun—it is opened from a personal presentation when the borrower has no account. Of course, cases have been known of big firms going direct to the manager of a bank if they are new to a district, or if they feel aggrieved by ill-treatment which they have received at the hands of another bank.

New branches are believed to be gaping for business, and thus they sometimes fall a prey to persons who open accounts with bogus cheques. These cheques being payable in another city have to be sent to their destination, but having no cash constituent at their back are returned unpaid. Before this event takes place, however, some money has been uplifted from the newly opened account—the account which was originally credited with the amount of the bogus cheque—and herein consists the fraud. The worthies who have opened the account have vanished like the baseless fabric of a vision, leaving not a wrack behind. The keenness of bankers to do business lays a snare for their feet.

It is natural for banks to identify themselves with their customers so far as they reasonably can, and to put business in their way when opportunity offers. Of course, in the case of big bits of work, estimates must be taken, and an outsider may carry the day, as he frequently does. The interest of the whole bank may be at stake, as compared with that of a single branch. Any jobbing work should, however, be given to the bank's supporters. Agents have been known to get accounts through placing their private orders in the hands of merchants. The latter being full of gratitude, and not fearing the Greeks, even when bringing the gifts of orders for goods, transfer not infrequently their accounts to their banking customers. It is a question if this indirect canvassing indicates a healthy state of matters. Bankers of the old school like to stand on their dignity and to await the arrival of customers. Now, new accounts are solicited beforehand, and accounts which have lain for many years with one bank have been known to be removed therefrom. It looks as if the old order were giving place to the new, and

that the era of the commercial traveller had arrived in banking. At present, it is rather in connection with new branches that competition shows itself in so unpleasant a form.

The future of the profession lies in the hands of its followers, many of whom are too high-souled to stoop to petty arts to get an account, and who would rather trust to their unvaried rectitude of conduct and strict devotion to business to help them along in maintaining at its usual altitude the position of their bank. A pushing agent has been known to be thanked by a deputation of directors for his zeal and success in getting new business. In regard to the taking away of accounts from other banks, happily the public is very conservative, and not prone to change. Were it otherwise, one could never depend on retaining an account once it was placed, and that would hardly be a satisfactory state of things. A country tradesman, who was at one time importuned to remove his account to a new branch opened in his neighbourhood, said : "I have dealt with the same bank for forty years, and they know me and trust me ; do you think I am going to change now, and begin with people who will take years to know me ? Certainly not." There is Scottish philosophy in this, well worthy of the land of John Reid and Dugald Stewart.

PRIZE ESSAY COMPETITION, 1900

The following subjects have been selected by the Essay Committee, for the next Prize Essay Competitions :

SENIOR COMPETITION

Give a brief account of the development of Metallic and Paper Currency. Discuss the advantages and disadvantages of each, and show how they can best be combined for economic purposes.

A First Prize of - - -	$100
A Second Prize of - - -	60

JUNIOR COMPETITION

Give an outline of the banking systems of England and Scotland, Germany, and France, and discuss their relative merits.

A First Prize of - - -	$60
A Second Prize of - - -	40

Any Associate is eligible for the Senior Competition.

Competitors eligible for the Junior Competition will comprise all Associates under twenty-five years of age.

The essays in either subject are not to exceed 7,500 words. All essays must be typewritten, having the writer's *nom de plume* or motto, also typewritten, subscribed thereto, and be mailed not later than the first day of July, under cover addressed to the President Canadian Bankers' Association, Montreal.

The address on the envelope containing the essay must be typewritten, and to insure identification of the essayist a separate sealed envelope, containing the name, rank and place of employment of the competitor, and with his *nom de plume* or motto on the outside, must accompany the essay.

A Special Committee will examine the essays and decide the prize winners.

The Prize Essays will remain the property of the Association.

The envelopes of successful competitors only will be opened except on request.

E. S. Clouston,
President

Montreal, 24th March, 1900

MISCELLANEA

The Money Devil.—The study of devilology has always been one of exceeding interest. Some of the most tremendous characters of fiction are those which portray the Evil Genius. Milton's Satan, walking in the courts of heaven, burning with ambition, planning the overthrow of the universe, with a courage that knew no pain and a daring that dreamed of no disaster, daring to defy the Omnipotent to arms, is a character alike fascinating and powerful; Mephistopheles, the jeering, sarcastic doubter, in whom is "condensed every form of doubt from that of the deist to that of the libertine;" Iago, the incarnation of wickedness and intellect, "the polished, affable attendant, the boon companion, the supple sophist, the nimble logician, the philosopher, the moralist, the scoffing demon, the goblin, whose smile is a stab and whose laugh is an infernal sneer"—each personify the dominant note of the age in which the character was wrought.

Milton wrote when men were reaching out for dominion and power, when personal ambition was drenching the world with blood. Goethe's Mephistopheles was thought out in the German atmosphere of doubt and criticism. Iago, the combination of intellect and will, is the product of the Elizabethan age of great intellectual and material development. Each devil is, in a measure, the product of the age. This is a money-making age, and he who would portray the Evil Genius must approach the subject from that point of view. It is highly proper that the latest creation should be the Money Devil, and since the days of the great masters no one has portrayed the character of His Satanic Majesty with more success than has that philosopher, teacher, statesman and romancer, Mr. Coin Harvey, of the United States; and of all the devils of fiction this Money Devil is the most unique.

The latest devil is not of grim-visaged mien, gaunt and ghastly and terrible; he has no horns and hoofs; he does not go up and down the land like a roaring lion, or Mr. Bryan. He works quietly and unobtrusively, but with the swiftness and precision of a trained and comprehensive mind. His main offices are New York, though he has an octopus farm in New Jersey. Appearances indicate that the main office is soon to be moved West. The Money Devil loans you money, through his agents, the bankers, when you ask for it and can give proper security; then he goes to work and sets the seasons back a month so you cannot get your crops in on time; he lets loose a lot of bugs to ruin your potatoes; when you are asleep, in the stillness of the night, he scatters tares among your wheat, and brings in a lot of chinch bugs and weevil to get what the tares do not kill; he manufactures hot winds to shrivel up what corn the crows and squirrels do not get; he scatters cholera germs among your hogs; he gives your children measles and mumps and runs up a big doctor bill; he sends around lightning-rod agents and gets you to sign notes for work that never is done; he sends lightning to kill your horses and cattle that are not rodded; he chases your stock into wire fences, which cut them until they are worthless; he persuades you to buy machinery you do not need, land you have no time to work and patent rights you cannot dispose of; fixes it so you are unlucky at horse races and shell games, and otherwise makes it impossible for you to raise the money you have borrowed; and, having thus succeeded in thwarting all your efforts, forecloses on the security and drives you out of house and home. And the worst of it is that no one is able to determine just how this is done; it is the subtlety of the thing that perplexes and baffles and makes the Money Devil so monstrous. Satan beguiled the first parents into sinning; Mephistopheles ensnared Faust and Marguerite; Iago wrought upon the jealous passions of the Moor until Desdemona was destroyed; but the Money Devil corrupted a whole Congress, committed the crime of '73 and then debauched the universe. As a powerful creation of the mind, the devil of populistic fiction overtops them all.—*Northwestern Banker (Des Moines, Ia.)*.

CONVERTING STERLING INTO CURRENCY—Mr. John Brookes, of San Francisco, writes to the Editing Committee:

"In replying to Mr. W. F. Cooper's letter of the 29th Nov., published in your issue of January, 1900, it will be necessary first to mention that the old par rate of exchange in Canada was 4.44^{44} and the present quotation rates are so much premium on the old par of exchange, as for instance, £100 at $9\frac{1}{2}$ would be £100 at $4.44.^{44} = \$444^{44}$ plus $9\frac{1}{2}\%$ of $\$444^{44}$ or $\$42^{22} = \$486.^{66}$.

"If Mr. Cooper will examine his formula he will find that 400 divided by 90 gives 4.44^{44}, the old par of exchange. So that he is merely reversing the order of things and multiplying the premium by the old par of exchange, instead of the par by the premium, that is, $109\frac{1}{2} \times 444.^{44}$ instead of $444.^{44} \times 109\frac{1}{2}$.

"I should think a simpler method than Mr. Cooper's would be to add or subtract the difference in exchange to or from the par rate ($486.^{66}$) for example 10· is $\frac{1}{2}$ of one per cent. of $444.^{44}$ added to 486^{66}, or 488^{88}."

QUESTIONS ON POINTS OF PRACTICAL INTEREST

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Sterling bill payable "at the current rate of exchange"

QUESTION 307.—A sterling bill on a Canadian house drawn at three days' sight is expressed to be payable "at the current rate of exchange when due." Is this payable at the 60 day or demand rate?

ANSWER.—For the reason set out in our reply to question 93 (1), we think this bill is payable at the 60 day rate. The usance between Canada and Great Britain is 60 days sight, and in our opinion "the current rate of exchange" refers to the rate for that usance.*

*Continuing the subject our correspondent wrote:

"The question arose in connection with a bill on one of our customers, presented for payment by one of the other banks in town, and received by it from a bank in X. We claimed the correct rate to be the 60 days rate—the bank in X claimed the demand one. As the amount was small we paid the demand rate, and referred the question to our Montreal branch office. The reply from them was that the "custom" in Montreal and "in Canada generally they believed," was to pay such bills at the demand rate.

"Knowing of the reference to the question in the JOURNAL, I thought it possible I might have missed some later opinion than the '98 one, and therefore troubled you again.

"If Montreal (the bank in X claimed the same custom prevailed there) is correct as to the custom in Canada, there must be a conflict of opinion. Could we in any way obtain an official deliverance on the point?

"Does it not seem somewhat anomalous that, by our law, a customer in Canada of a British firm should, *after maturity of his bill*, practically have

Cheque to bearer drawn on an outside point—Banks' right to refuse negotiation without the customer's endorsement

QUESTION 308.—May a bank refuse to negotiate a cheque drawn on some other point and payable to bearer, unless endorsed by the customer?

ANSWER.—A bank may refuse to cash such a cheque under any conditions whatever.

If, however, the question intended is whether a bank

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75 days discount on it? In the case of a bill for a large amount and with money at the late high rates it might preclude any possibility of profit to the British merchant."

To which the Editing Committee replied:

"We have been making enquiries and find that the practice with regard to the rate of exchange varies. At Montreal the Banks have agreed among themselves to pay such documents at the demand rate, and the same practice prevails in Toronto. No doubt the considerations that moved them are those which you have set out in the last part of your letter, and it may be that we shall have to give way generally on the question of rates, not as a matter of legal right, but as a matter of expediency as a general understanding among the banks.

"We do not see any way in which the question can be authoritatively settled. We think there is no doubt that for the last sixty or eighty years 60 day exchange has been the usance between Canada and England, and that the current rate means the rate for the current usance, although we do not know that the Courts have ever pronounced on the point. There are, however, reasons for believing that the evidence as to the meaning of "current rate of exchange" would substantiate the views we have hitherto expressed in the JOURNAL.

"It does not necessarily follow that the British merchant suffers. If he sells his goods to be drawn for in sterling on a Country where another currency prevails, the element of exchange has to be considered in his price, just as it has when (*e.g.*) cotton is sold in New Orleans to be drawn for in sterling. In the latter case, if the drawer is only going to get $4.80 for his bill, he adds the difference to his price. If he is going to get $4.90 he allows the difference in his price, and precisely the same thing takes place with regard to the seller of goods in Great Britain. Of course if he is uncertain whether he is going to get payment at the sight rate or 60 day rate, he may be at some disadvantage, but that is only because of the uncertainty, and he can prevent it by making the draft payable "at the current rate for bankers' demand bills.

"As a case in point, we might mention the Australian practice, which appears universally to be to remit for collected bills by a 60 day bill on London, less their collection charges.

"The practical working out of the matter, like many other things, will probably be quite illogical and end in a compromise. However, it seems to us impossible for banks on which sterling drafts or letters of credit are drawn payable at the current rate of exchange, to say that these are payable at the 60 day rate, that being the current rate in Canada, and at the same time to say that an acceptance of a Canadian merchant payable at the current rate of exchange must be paid at the demand rate. The difficulty would of course entirely disappear if the British merchants would make their bills payable, not at the current rate of exchange, but at the current rate for bankers' demand bills."

acts reasonably in refusing to cash such a cheque for a customer without his endorsement, we should say that such a refusal is most reasonable.

The only cheques about the payment of which the bank is under any obligation are those drawn on itself. If a cheque on itself payable to bearer is presented, it cannot call on the bearer to endorse it as a condition of payment.

Note embodying a contract respecting shares lodged as security for payment

QUESTION 309.—Is the following a legal form of promissory note?

MONTREAL, 31st October, 1899

$3,000.

On demand for value received I promise to pay to J. Richardson or order at the Merchants Bank of Canada here, three thousand dollars and interest at the rate of 6 per cent. per annum, having deposited with this obligation as collateral security 5,000 shares Payne Consolidated Mining Co., with authority to sell the same without notice, either at public or private sale, or otherwise, at the option of the holder or holders hereof on the non-performance of this promise, [he or they giving me credit for any balance of the net proceeds of such sale remaining, after paying all sums due from me to the said holders or holder, or to his or their order], [and it is further agreed that the holder or holders hereof, may purchase at said sale.]

(Sgd.) A. MCKAY

ANSWER.—It is of course quite lawful for the parties to make such a contract, but we understand the question is as to whether it is a note to which the Bills of Exchange Act would apply, and on this point we are of opinion that it is not, for the reason that in addition to the inclusion of "a pledge of collateral security with authority to sell or dispose thereof," which are permitted by the Act (section 82, sub-sec. 3), it contains other provisions, notably an assignment of the proceeds as security for other sums due to the holders of the note. There are other conditions in the form which might have the same effect, but the one specially mentioned clearly has. A case in point is reported in Vol. 4 of the JOURNAL, page 218.

Protest—Error in the notice as to place of presentment

QUESTION 310.—A note payable at Bank B was handed to the notary by Bank A for protest. It was duly presented, and notice of dishonour given in the ordinary form. In the Act of Protest attached to the note the notary, through error, declared that he had presented the note "at Bank A, where the same is payable." Does this invalidate the protest?

ANSWER.—The Act of Protest is merely a certificate as to what the notary has done, and could be corrected at any time.

The notice of dishonour having been duly given, the parties would be liable without any further action on the part of the notary. He attaches his Notarial Act merely as a convenient mode of proving that the notice has been duly sent, but proof of the notice might be made in any other way.

In answer to a further enquiry on the same subject:

If in the notice of dishonour it was stated that the note had been presented at Bank A while really payable at Bank B, that would not necessarily invalidate the notice. Such an error might be regarded as a mis-description of the bill, but the notice would not be vitiated thereby unless the party to whom the notice was given was in fact misled by it. (Sec. 49, (g)).

It is to be observed that the Act does not require a statement in the notice of dishonour that the bill was presented at the place where payable. See forms "G" and "H" in the first Schedule to the Act.

Sterling bills—Rate of exchange

Question 311.—What is the correct rate (demand or 60 day) to charge on a sterling acceptance when due? Why, custom or law?

Answer.—Under section 71, sub-section 6, of the Bills of Exchange Act, the rate fixed for such bills is the sight rate, unless otherwise expressly stipulated.

If a bill is drawn for so many pounds sterling simply, it would be payable at the sight rate.

If for so many pounds "at the current rate of exchange," that is a stipulation which fixes the rate. The "current rate of exchange" between Canada and Great Britain is the 60 day rate, that being the established usance. The question has been discussed in the Journal; see answer to question 99, also the discussion appended to Question 307.

Life insurance policy held as security

Question 312.—As security for a debt of $300 a creditor holds a policy for $1,000 on the life of a debtor. Is the creditor entitled to receive from the insurance company the cash surrender value of the policy—amounting to less than his claim—and surrender the policy without the consent of, or reference to, others interested in it?

Answer.—The fact that he has surrendered the policy to the Company, receiving all they would allow for it, is not conclusive evidence that he has realized on his security prudently. If as a matter of fact it could be established that it was worth more than the cash surrender value, the creditor would be liable, if not protected by the agreement on which he held the security.

Stamped endorsements

QUESTION 313.—John Smith carries on business under the name of the X Manufacturing Company. Is a stamped endorsement "X Manufacturing Company," without the proprietor's name, sufficient?

ANSWER.—Such an endorsement, if impressed by or with the authority of the proprietor of the business, would be quite legal, but it would not be within the rules adopted by the Association. See 3rd Clause of Rule 2, which requires the name of the person to be added.

Cheque dated January 1899 offered for deposit in January 1900

QUESTION 314.—A customer wishes to deposit with his bank, on 5th January, 1900, a cheque drawn on another bank dated 5th January, 1899. Is the bank justified in refusing to take it on deposit only because it is dated a year back?

ANSWER.—We think the bank should not refuse the cheque only for the reason stated. We cannot see what risk the bank would run in taking such a cheque on deposit, although of course the bank may take or refuse to take on deposit whatever items it chooses. The most that could be said is that the cheque might be held to be overdue under section 36, sub-section 3. That would not, however, lessen the responsibility of the customer to the bank if it should be dishonoured.

Joint deposits

QUESTION 315.—One partner in a firm having a current account with a bank dies. Is the surviving partner entitled to draw the balance? If he should continue to make deposits in the name of the firm, can he withdraw the funds? Would his rights be affected by the appointment of an executor or administrator of the deceased partner?

ANSWER.—The surviving partner has a right to withdraw the money on deposit at the time of the other partner's death. In this respect the account must be regarded as a joint deposit, the control of which passes to the survivor. See answers to questions 28 and 97.

If the surviving partner deposits money in the name of the firm we think he is entitled to withdraw the same and to sign the firm's name for the purpose. His rights would not be affected by grant of Letters of Probate or Administration in connection with the estate of the deceased partner.

Note form with engraved figures "189—"—Alteration to 1900

QUESTION 316.—We have a number of note forms with the figures 189— printed on them. Would you consider the initials of the parties necessary if these figures were struck out and 1900 substituted?

ANSWER.—We think that initials are unnecessary, as the circumstances show that 1900 is the true date.

Cheque crossed "Duplicate."

QUESTION 317.—A cheque is issued, having written across it the word "duplicate." If the bank should pay this what would be its duty as regards the original? Is the drawer liable on the original?

ANSWER.—While the mere issue of a duplicate cheque may or may not, according to the circumstances, be regarded as an order to the Bank to stop payment of the original, it would certainly protect the Bank from any liability to its customer if it should refuse payment of the original. A duplicate is, however, seldom issued without notice being given stopping payment of the original. The drawer would undoubtedly be liable on the original to a holder in due course, hence a duplicate should not be issued without proper indemnity.

Press copies vs. carbon copies

QUESTION 318.—The practice of filing carbon copies of typewritten letters instead of copying them in letter books seems to be growing. I would like the opinion of other bankers as to the convenience and safety of the practice. The use of the copy in evidence is a matter to be considered. The letter press copy, owing to the order in which it comes in the letter book, presents in itself evidence of its genuineness, while a carbon copy might easily be fabricated.

ANSWER.—There are no degrees of secondary evidence—a letter press copy and a carbon copy stand in precisely the same position in regard to *admissibility* as evidence, and if the loss of the original be proved or its non-production otherwise properly accounted for so as to lay the foundation for the admission of secondary evidence, the question would be simply one of fact, viz:—"is the carbon letter a copy of the original?"—the same question would be involved if the letter press copy were offered. If the contest were upon the *existence* of the original or as to its date or when sent, &c., one can readily see that the letter press copy, appearing in its proper place, would in ordinary circumstances be a stronger piece of evidence than a carbon copy, but

if the contest were as to the *contents* of the original neither the letter press copy nor the carbon copy would prove itself. Evidence would have to be given on this point, and if the contest were keen it might be easier to throw doubts upon the accuracy of the carbon copy than upon that of the other. Still the question would be one of fact and in the majority of cases it would be as easy to prove the one as the other.

Cheque marked before hours

QUESTION 319.—A cheque was presented between 9 and 9.30 a.m., and paid by the bank to the payee, who wished to get his business transacted early. At 9.30 a.m. the drawer of the cheque gives the bank written notice to stop payment of the same. Would the bank be in any way responsible, having paid the cheque before hours?

ANSWER.—We think it is too late for the drawer to stop payment, and that the bank is protected.

Cheque with the amount expressed in figures only

QUESTION 320.—The amount of a cheque is expressed in figures only, both in the body of the cheque and in the margin. Has the bank a right to refuse payment of a cheque so drawn, for which there are funds?

ANSWER.—We cannot find that the Courts have ever considered the case of a cheque drawn as above described, but the bank's rights on the point mentioned do not depend on the law, so much as on the agreement between it and its customer, which agreement is chiefly to be implied from the course of business and the custom of banks.

The courts would probably hold that such a cheque was a valid instrument, and they might further hold that the bank was bound to honour it. We think, however, that by virtue of the custom requiring customers to express the amount of cheques in words the contract of the bank to pay is conditional on the cheque being drawn in the usual way, and that it would be under no responsibility if it should decline to pay until the cheque was amended, especially if the reason for the refusal, and the fact that funds were held to meet the cheque when properly filled up, were explained to the party presenting the cheque. It could scarcely be said that a refusal for such a reason would work any injury to the customer's credit.

Cheque or acceptance signed for a firm by an attorney presented after the attorney's death

QUESTION 321.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person

holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death.

ANSWER.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

Non-trading partnership—Liability of partners

QUESTION 322.—To what extent are partners in a non-trading partnership liable to a bank:

1. In respect to an endorsement made by one member of the firm on a note given to them in settlement of an account for services, as for instance to solicitors.

2. Where an endorsement is given for the accommodation of the maker of a note.

ANSWER.—As a non-trading partnership does not *prima facie* require to give promissory notes or accept bills, the making or acceptance by one partner in the name of the firm would not *prima facie* bind the partnership. Evidence of the actual transaction would be admissible, and if it were *de facto* a partnership transaction the firm would be bound. The endorsement of a bill or note payable to the order of a non-trading firm stands in a little different position. There is no *prima facie* presumption that a non-trading firm does not require to take a note or bill in payment or settlement of a debt due the firm, and if the firm's name were endorsed by one partner upon such a bill or note the endorsement would bind the firm if it were given in connection with a partnership transaction, but the firm would not be liable if the transaction were that of the individual partner only, unless *de facto* his authority as a partner extended to such a case. There are so many kinds of non-trading partnerships, that no general rule can be laid down as to what would and what would not be *prima facie* a partnership transaction. Much would depend upon the nature of the business and upon the course of dealing in the past, *e.g.*, if a non-trading firm kept a bank account and were in the habit of discounting bills and notes payable to the order of the firm, there could be no question that for the purposes of the bank the scope of that partnership would authorize one partner to endorse the firm's name on the paper discounted, but if one partner in a non-trading firm which *prima facie* did not require capital to carry on its business and which did not keep a bank account should open such an account and discount paper in the firm's name, and if it should turn out that the whole thing was a fraud on the partnership and that the firm did not authorize the transaction or get the benefit of it, we think the bank would have great difficulty in collecting from the firm upon its endorsement.

2. In the second case the firm would not be liable unless it could be shown that the partner making the endorsement had *de facto* authority to make it.

Liability of vessel owner for cost of cargo purchased by the master of the vessel

QUESTION 323.—Can a master of a schooner, not being owner or part owner, make the vessel liable for the cost of a cargo of grain? If he buys a cargo, giving in payment a draft on a third party not interested in the vessel, can the holder in the event of dishonour look to the vessel or her owners?

ANSWER.—We think the master has no power to make the vessel liable for the cost of purchasing a cargo.

Bill accepted by two drawees—Right of the bank at which the bill is domiciled to charge it to the account of one of the acceptors

QUESTION 324.—A bill drawn on and accepted by two drawees is made payable at a bank. Is the bank authorized at the maturity of the bill to pay it and charge it to one of the two acceptors?

ANSWER.—The bank has clearly no authority (in the absence of some special agreement) to pay such an acceptance and charge it to one of the acceptors. We also think that if the bank had become the owner of the bill before maturity, and held it when it fell due, it would not (in the absence of agreement) have the right to set off the amount against one of the acceptors. "Set off" must not be confounded with "counter-claim." If the acceptor, having a balance to his credit, should sue the Bank therefor, the Bank might counter-claim in the action against him and the other acceptor for the amount of the bill, and thus practically obtain payment in this way—but this depends not upon the law of set off, but upon the practice of the court, and in some countries "counter-claim" is not allowed—the defendant must bring a cross action.

Account of a company operated in the name of the company's agent—Liability of the company

QUESTION 325.—An account is opened in the name of John Adams, the cheques on which bear above his signature the name of a mining company. He is known to be an employee of the company, acting in the absence of the formally authorized agent. Would the company be liable for an overdraft in such an account caused by the payment of wages, and if not would Adams be personally liable?

ANSWER.—The question involved is one of agency, depending on the facts of the case, and could not be answered without a full statement of the facts. We should suppose that the company would not be directly responsible, that the agent alone would be personally liable, but he might have a claim on the company for money expended on their behalf, and in that indirect way the company might be responsible to the bank.

Liability of an agent for transactions on the company's behalf

QUESTION 326.—Is the properly authorized agent or official of any company personally liable for transactions on the company's behalf which are within his powers ?

ANSWER.—We do not think an agent is liable under the circumstances mentioned.

Undated and post-dated cheques

QUESTION 327.—Are undated and post-dated cheques negotiable ?

ANSWER.—They are not invalidated by the absence of a date or by being post-dated, and are therefore on the same footing as to negotiability as other cheques. [Secs. 4 (a) and 13 (2) Bills of Exchange Act.]

Securities under Sec. 74 of the Bank Act

QUESTION 328.—Can a company having a Dominion charter borrow on the security of goods under Section 74 of the Bank Act without limitation as to the amount ?

ANSWER.—If the company is incorporated under the Companies' Act, and gives its own promissory notes with security under sec. 74, there would seem to be no limit to the amount which it may borrow. See Amendment to the Companies' Act, Chap. 27, 1897. If it should borrow in any other way, as for instance by overdraft, the limitation in the Act would apply.

If the company has a special charter, its power to borrow would depend on its own charter, or the general law if no special provisions as to borrowing were contained in the charter.

Guarantee written on a note

QUESTION 329.—(1) Could the amount of the subjoined note be collected from Jno. Smith, if at maturity Jno. Jones was unable to pay it ?

(2) Could it be collected from Smith if he had simply written his name on the back without guaranteeing it ?

(3) In question (2) would it make any difference if the proceeds of note had gone to Smith's credit, he having discounted it ?

$100. ELMIRA, ONT., 2nd Jan'y, 1900
Three months after date I promise to pay to the Federal Bank or order at the Federal Bank, here, the sum of one hundred dollars.
Value received. JNO. JONES

Endorsed :

For value received I hereby waive notice of protest of within note and guarantee payment of same. JOHN SMITH

ANSWER.—As the law at present stands, Smith is not liable as endorser, and the fact that the proceeds of the note had gone to Smith's credit would not make any difference in this respect ; but if it could be shown that the transaction was a loan to Smith on the security of the note, he would be liable, as borrower, to repay the loan, but not as endorser.

The question as to Smith's liability as guarantor is by no means easy to answer. The Statute of Frauds makes it necessary to the validity of a contract of guarantee that it should be in writing, signed by the guarantor or his authorized agent. The courts have held that under this statute all the essential parts of a contract must appear in writing. The contracting parties and the consideration are, of course, essential parts of every contract. In the case of a guarantee a subsequent statute provided that the consideration need not appear in the writing but might be proved by other evidence, but it is still necessary that the contracting parties should appear. Assuming that both the face and the back of the note may be looked at for the purpose of showing the contract in writing, the question: With whom is the contract of guarantee made ? appears to be left in doubt. " I hereby guarantee payment of the within note." To whom is payment guaranteed ? It is not necessarily the Federal Bank, as the promise is to pay the Federal Bank or order, and the guarantee simply means that John Jones will pay the note in accordance with his promise. If the intention was to guarantee to the holder for the time being that the note would be paid, it can hardly be said that the parties to the contract appear in the writing.

Again, it might be quite consistent with the transaction that the guarantee was made with a third party who was interested in the payee of the note and who might have given him credit on the strength of the guarantee that Jones' note would be paid. The fact that the writing does not necessarily show the person with whom the contract of guarantee is made makes it necessary to give verbal evidence, and this is what the statute prevents being given.

On the whole we think that Smith could not be made liable on his guarantee; but, if the note were held by the Federal Bank when it matured, and if the contract of guarantee were really made with the bank, and if the bank brought the action upon it, it might possibly be held that, as the name of the bank appeared in the writing, the provisions of the statute had been sufficiently complied with.

Guarantee written on a note

QUESTION 330.—A sends B in settlement of an account a promissory note payable to B and endorsed by C. Would the difficulty about C's liability be removed if he should add to his endorsement the words "for value received I hereby guarantee "payment of the within note"?

ANSWER.—The answer to question 330 will explain the position here.

Cheque marked "Good for two days only"

QUESTION 331.—A correspondent writes:

In your issue of July, 1899, you have answered to question No. 228, which is: Can a bank refuse payment of a cheque which it has marked "Good for two days only," if presented after the expiration of the two days? "We think that after the two days have expired, the cheque must be regarded as though it had not been marked by the bank, and if there are then no funds, its refusal would seem to be in order."

Will you allow me to express the opinion that this answer does not appear clear to me, as in accepting the cheque and stamping it "Good for two days only," the account of the maker of the cheque has been debited and the amount deducted from the balance. Should I understand that you mean that the debit entry be cancelled and the amount of the debit recredited if the cheque is not presented for payment within two days of its acceptance by the bank?

Besides, on general principle, I am of opinion that the acceptance of a cheque by a bank renders it liable to the same extent as its acceptance of a bill of exchange drawn upon it by a foreign customer, and its responsibility cannot be affected by limitation.

I have always been under the impression that the stamping of cheques "Good for two days only" was only to prevent accepted cheques from remaining outstanding.

What protection would there be to payees of cheques residing in a different place than where the cheques are payable, if the acceptance of a bank can be declared void on account of unavoidable delay in presentation?

ANSWER.—This subject was more fully discussed in the number of the JOURNAL for October, 1899, and we would refer you to what was there said. Our answer to Question 228 is based on the theory that at any time after the expiration of the two days the bank's liability on the cheque ceases, and that the drawer therefore has a right to request the bank to cancel the entry in his account.

No doubt the acceptance of a cheque in proper form by the bank makes it liable to the same extent as the acceptor is liable on any ordinary bill of exchange. The point is that an acceptance "Good for two days only" is not properly speaking an acceptance at all, but only a special kind of engagement, limited by its terms. We see no hardship in this view of the case, for of course no person is bound to take the cheque. If one chooses to do so he knows that if not presented within the time limit payment is not necessarily guaranteed by the bank.

The rights of holders of cheques which are accepted in the proper way differ materially from those of holders of cheques accepted conditionally on their being presented within two days.

Ninety day bills—Rate of Exchange

QUESTION 332.—What is the proper rate for a 90-day bill on London as compared with a 60-day bill, and how is it calculated?

ANSWER.—The difference between a 60 and a 90-day bill should be about half the difference between a demand and a 60-day bill. The difference in each case depends chiefly on the market discount rate in London. There are, however, minor considerations which modify the effect of the rate, as long bills sometimes command a more favourable discount rate than the shorter bills and sometimes a less favourable.

Generally speaking the difference between demand and 60-day bills is 60 days' interest at the current market rate in London, the difference in stamps being also allowed for; and between 60 and 90-day bills, 30 days' interest at the same rate.

Bank Money Orders

QUESTION 333.—A Branch office in Ontario issued a money order in favor of a Montreal firm. The firm's bankers added and collected five cents. This bank is not reported as belonging to Bankers' Association. What right has any bank to charge on a negotiable document payable in same city?

ANSWER.—The bank had a technical right to collect the commission, but we think their action was not in accordance with the spirit of the arrangement among the banks with respect to these orders.

Power of attorney to accept bills, signed by an attorney

Question 334.—The power of attorney sent out by banks to procure acceptance of drafts is frequently signed by an attorney of the drawee. Has he the power to instruct the bank to accept ?

Answer.—Not unless the power of attorney gives him power of substitution, *i.e.* power to appoint another Attorney to act in his stead.

Legal

THE LIABILITY OF BANKERS*

AN important decision upon the extent of the protection afforded to bankers by section 82 of the Bills of Exchange Act, 1882, has been given by Kennedy, J., in *Hannan's Lake View Central Limited v. Armstrong & Co.* That section provides that "where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur liability to the true owner of the cheque by reason only of having received such payment." Provided, therefore, a collecting banker acts without negligence and in good faith, he is perfectly safe in taking crossed cheques from a customer, and is not imperilled by the fact of the customer's title to the cheque being defective. In the case of a bank there is no difficulty about the requirement of good faith, but, as the present case shows, a serious question may arise whether the banker has acted in any particular transaction without negligence.

The point was considered, and a useful explanation of the phrase "without negligence" given by Denman, J., in *Bissel & Co. v. Fox Brothers.* There the plaintiffs had appointed S. as their traveller. All the cheques, cash, and bills received by S. were to be remitted to the plaintiffs at the end of each week, and none were to be retained without the consent of the plaintiffs. For some years S. remitted all cheques and bills to the plaintiffs by post, and sent them the cash in postal or post office orders. In 1883 he opened an account of his own with the defendants' bank, and paid into this account, without the sanction or knowledge of the plaintiffs, various cheques received by him on account of the plaintiffs, and payable to

The Solicitors' Journal, March 3, 1900.

"J. E. Bissel & Co., or order." The cheques were endorsed by S. in his own name "*per pro* J. E. Bissell & Co.," and some of them were crossed. The cheques were taken by the defendants without any enquiry as to S.'s authority to deal with them, and were immediately placed to his credit in his account as cash. Under these circumstances it was held that the bankers had not acted "without negligence," and were not entitled to the protection of section 82. "The negligence contemplated in section 82," said Denman, J., "must mean the neglect of such reasonable precautions as ought to be taken with reference to the interests, not of the customer who purports to have the authority, but of the principal whose authority he purports to have; the section being framed wholly with reference to the liability of the banker to the 'true owner' of the cheque, and not with reference to his liability to his customer." And the judgment of Denman, J., was adopted by the Court of Appeal. In applying this principle to the case in question stress was naturally laid upon section 25 of the Bills of Exchange Act, 1882, according to which "a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." Thus the bank in taking the plaintiffs' cheques and placing them to the credit of S., without enquiry as to his authority, were neglecting a precaution imposed upon them by the Act itself.

The present case before Kennedy, J., also arose out of the misappropriation by an employee of his employer's cheque. A cheque for £542 in favour of Hannan's Lake View Central Limited was paid in by their then secretary, H. Montgomery, to his private account with Messrs. Armstrong & Co., who are bankers. The cheque was crossed generally and the endorsement consisted of the name of the plaintiff company, either stamped or type-written, followed by the signature "H. Montgomery, Secretary." The amount of the cheque was credited by the defendants to Montgomery and was drawn upon by him for his own purposes. The articles of the plaintiff company contemplated that endorsements would be made by two directors and the secretary, but in practice it is found convenient for the

secretary to endorse cheques by himself, and this practice had been adopted by the plaintiff company. Upon the evidence, however, Kennedy, J., held that the secretary was authorized to do this for one purpose only—namely for the purpose of his paying the cheques into the plaintiffs' account at their own bank, which was not the defendant bank. The evidence also showed that it is a general practice of limited companies for this particular and limited purpose to permit their secretaries to endorse cheques drawn payable to the order of their employers which come into the secretaries' hands as the servants of those employers.

The endorsements being therefore, so far as the plaintift company were concerned, sufficiently regular, the question was whether the defendants acted negligently in receiving the cheque from the secretary and placing the proceeds to the credit of his private account. From one point of view it is hard upon the bank to have to be responsible for the misconduct of the plaintiffs' secretary. Any loss caused by him in the course of his employers' business would seem most naturally to fall upon them. But at the same time the plaintiffs were entitled to expect persons into whose hands their cheques came to adopt ordinary precautions to insure that the cheques were being properly dealt with, and under the circumstances Kennedy, J., held that the defendants had not discharged this duty. According to the evidence of their own chief accountant there was no instance known of any secretary of a limited company endorsing by himself a cheque payable to his company except for the purpose of the cheque being paid into the company's own banking account, and the bank consequently should have taken note of the departure from the invariable practice in the present case, and should have made enquiry as to the secretary's authority to deal with the cheque. Since they omitted to do so they did not act "without negligence," and they were not entitled to the benefit of section 82. They were held liable, accordingly, to account to the plaintiffs for the amount of the cheque.

COURT OF APPEAL, ENGLAND

De Braam v. Ford*

A bill of sale stipulated that the principal sum secured should be repaid "on or before 1st Nov., 1899"

***Held* that it was substantially in accordance with the statutory form, and was valid.**

This was an appeal against a decision of Mr. Justice North (reported at page 178, Vol. VII., JOURNAL). The question raised was upon the construction of section 9 of the Bills of Sale Act, 1882, which provides that "a bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void, unless made in accordance with the form in the schedule to this Act annexed." The form given in the schedule contains (*inter alia*) the following clauses:—"And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal —— payments of £—— on the —— day of —— [or whatever else may be the stipulated times or time of payment]. And the said A. B. doth also agree with the said C. D. that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security]." The plaintiff, Jeane André de Braam, had borrowed money from the defendant, a money-lender, of Cork street. The borrower and his wife gave to the lender a bill of sale of some furniture. It was thereby agreed that payment of the principal sum secured should be made "on or before the first day of November, 1899." The money secured was not paid, and the defendant was taking steps to realize. The plaintiff by this action claimed a declaration that the bill of sale was void, and an injunction to restrain the defendant from removing or seizing the furniture. The plaintiff applied for an interim injunction. Mr. Justice North was of opinion that an agreement to pay on or before a named day was an agreement to pay at an uncertain time, and consequently that the bill of sale was not in accordance with the statutory form and was void. He therefore granted an interlocutory injunction. The defendant appealed.

The Court allowed the appeal.

**The Law Times Reports.*

The Master of the Rolls said that in this case the Court had to do that which they seldom did, viz., to attend to form, not to substance. They were driven to that by section 9 of the Act. It was plain enough that this bill of sale was not in the statutory form; the question was whether it was "in accordance" with that form. This was an old difficulty which had puzzled the Court before. What was meant by "in accordance" with? His Lordship could only take the meaning from what was said by the House of Lords in *Simmonds v. Woodward.* There Lord Halsbury said: "If the bill of sale in substance performs the function which the statute intended to be performed by that form, it appears to me that it is complied with." It was obvious from the form that the time for the "payment" of the debt must be fixed. What was the meaning of "payment"? In his Lordship's opinion it meant the time at which payment was to become obligatory—the time at which the borrower must pay or he could be sued for the debt. The time at which the obligation to pay was to arise must be defined in the bill of sale. It had been decided in previous cases that it that time was not distinctly fixed—*e. g.*, if the money was made payable on demand, the bill of sale would be void. The Court were now asked to stretch those decisions, and to say that, although a time for payment was fixed, yet the bill of sale was void because the grantor had stipulated that he might pay off the money sooner. This was a rather startling proposition. But look at the matter a little more closely. Suppose there had been a covenant to pay the money on a fixed day, with an added proviso that the grantor should have an option to pay it sooner. That would have been, as a "defeasance of the security," perfectly in accordance with the statutory form. Could it be said that, because the bill of sale was not precisely in that form, it was not in accordance with the statutory form? His Lordship could not go that length. The learned judge had lost sight of the fact that the time of payment was the time when payment was to become obligatory. The appeal must be allowed. The costs in both Courts must be the defendant's costs of the action.

The President of the Probate Division said that two views of the construction of section 9 were obviously possible and two views had in fact been taken. But in *Ex parte Stanford* the majority of the full Court of Appeal adopted the more liberal construction. Lord Justice Bowen, who delivered the judgment of the majority, said: "A bill of sale is surely in accordance with the prescribed form if it is substantially in accordance with it—if it does not depart from the prescribed form in any material respect. But divergence only becomes substantial or material when it is calculated to give the bill of sale a legal

consequence or effect, either greater or smaller, than that which would attach to it if drawn in the form which has been sanctioned, or if it departs from the form in a manner calculated to mislead those whom it is the object of the statute to protect." That view commended itself to his Lordship rather than the narrower view which was taken by Lord Justice Fry. The majority of the Court there held that the bill of sale must be in substance in accordance with the statutory form. Here the effect of the bill of sale was to impose on the grantor an obligation to pay the money on a fixed day; but an option was given him to pay it earlier. Was that in substance in accordance with the statutory form? There must, no doubt, be a stipulated time for payment—a stipulated time at which the grantor was bound to pay. The stipulation in the present case was not at variance with the statutory form. When it came to the provision for defeasance of the security the statutory form was not so peremptory as in its earlier part. It left the terms and the language of the defeasance at the option of the parties. As to the payment of interest, though it was not so stated expressly in words, the effect of the deed was that, whenever the principal money was paid off, interest was to be paid up to the time of the payment of the principal.

LORD JUSTICE ROMER agreed. He would only add that you could not, under the guise of a defeasance, introduce a provision inconsistent with the prior part of the form. There was no such inconsistency in the present case.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Six months ending 30th December—	1898-9		1899-1900	
Free	$31,581		$35,845	
Dutiable	43,524		52,675	
	$ 75,105		$ 88,520	
Bullion and Coin	3,856	$ 78,961	5,178	$ 93,698
Month of January—				
Free	$ 4,101		$ 5,496	
Dutiable	6,341		8,548	
	$10,442		$14,044	
Bullion and Coin	42	$10,484	81	$14,125
Total for seven months		$89,445		$107,823

EXPORTS

Six months ending 30th December—				
Products of the mine	$ 7,053		$ 6,635	
" Fisheries	6,227		7,136	
" Forest	19,112		20,979	
Animals and their produce	31,121		37,190	
Agricultural produce	14,059		14,437	
Manufactures	5,429		6,468	
Miscellaneous	111		216	
	$ 83,113		$ 93,061	
Bullion and Coin	2,240	$ 85,353	4,999	$ 98,060
Month of January—				
Products of the mine	$ 1,240		$ 1,078	
" Fisheries	560		626	
" Forest	500		785	
Animals and their produce	2,528		3,134	
Agricultural produce	1,646		2,244	
Manufactures	826		1,076	
Miscellaneous	6		16	
	$7,306		$8,959	
Bullion and Coin	76	$7,382	644	$9,603
Total for seven months		$92,735		$107,663

SUMMARY (in dollars)

For seven months—		1898-9		1899-1900
Total imports, other than bullion and coin		85,548,000		102,564,000
Total exports, other than bullion and coin		$ 90,419,000		$102,020,000
Excess	(*Exp.*)	$ 4,871,000	(*Imp.*)	$ 544,000
Bullion and coin, net	(*Imp.*)	1,583,000	(*Exp.*)	384,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of December, 1899, January and February, 1900, and comparison with February, 1899:

LIABILITIES

	31st Dec., 1899	31st Jan., 1900	28th Feb., 1900	28th Feb., 1899
Capital authorized	$76,108,664	$ 76,608,664	$ 77,608,664	$ 76,508,684
Capital paid up	63,584,022	63,734,845	63,876,310	63,322,585
Reserve Fund	29,967,724	30,055,896	30,261,307	28,051,254
Notes in circulation	$ 45,999,753	$ 41,320,083	41,699,231	$ 37,525,337
Dominion and Provincial Government deposits	7,087 161	6,349,582	6,044,828	5,448,147
Public deposits on demand	99,463,898	95,227,158	92,509,743	88,387,578
Public deposits after notice	173,769,968	174,614,238	174,696,918	161,832,288
Bank loans or deposits from other banks secured	506,979	520,979	489,673	....
Bank loans or deposits from other banks unsecured	2,998,674	2,750,690	2,534,691	3,232,031
Due other banks in Canada in daily exchanges	196,372	94,022	165,932	149,019
Due other banks in foreign countries	908,901	1,039,470	1,055,258	588,609
Due other banks in Great Britain	4,360,301	5,384,295	4,809,017	3,245,428
Other liabilities	726,541	632,339	616,159	381,118
Total liabilities	336,018,630	327,932,926	324,621,528	$300,789,638

ASSETS

Specie	$9,584,702	$ 9,824,184	$ 9,740,874	$ 9,261,738
Dominion notes	17,910,241	18 412,601	17,725,845	16,269,761
Deposits to secure note circulation	2,056,344	2,056,344	2,056,344	1,995,523
Notes and cheques of other banks	12,361,732	9,684,487	8,963,163	10,748,189
Loans to other banks secured	374,930	504,968	494,461	....
Deposits made with other banks	4,767,715	4,187,854	3,814,825	3,612,869
Due from other banks in Canada in daily exchanges	312,403	211,350	243,757	223,068
Due from other banks in foreign countries	22,291,249	19,639,957	18,116,808	21,909,685
Due from other banks in Great Britain	12,078,307	10,851,847	9,495,472	12,782,998
Dominion Government debentures or stock	4,779,102	4,766,495	4,766,992	5,049,617
Public, municipal and railway securities	31,417,765	31,436,233	31,530,274	31,989,562
Call loans on bonds and stocks	32,435,445	31,625,727	30,020,819	28,815,971
Current loans and discounts	266,678,601	268,205,970	271,858,731	234,008,496
Loans to Dominion and Provincial Governments	2,358,010	1,353,758	1,292,011	2,295,050
Overdue debts	1,899,801	1,863,071	1,879,505	2,371,322
Real estate	1,119,780	1,107,528	1,075,507	1,873,740
Mortgages on real estate sold	654,270	649,502	673,232	544,383
Bank premises	5,977,577	5,994,446	6,088,365	5,999,233
Other assets	2,660,221	2,599,572	2,793,309	1,998,032
Total assets	431,718,345	424,976,063	422,630,506	$391,749,425
Loans to directors or their firms	8,015,093	8,393,354	7,989,443	$6,939,812
Average amount of specie held during the month	9,668,691	9,883,614	9,793,677	9,162,908
Average Dominion notes held during the month	17,690,132	17,341,108	17,783,518	16,890,878
Greatest amount of notes in circulation during month	49,572,085	45,854,963	42,395,187	38,188,602

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

	MONTREAL		TORONTO		HALIFAX		HAMILTON	
	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00
	$	$	$	$	$	$	$	$
March ...	62,043	69,610	39,012	40,646	5,285	4,838	3,021	3,122
April	50,003	61,249	33,035	39,182	4,472	5,209	2,858	3,304
May	56,475	71,777	34,374	44,349	4,798	5,602	2,932	3,513
June	59,471	63,756	36,960	41,189	4,997	5,461	3,001	3,224
July......	60,423	63,209	35,727	40,569	5,851	4,742	3,117	3,304
August ..	55,578	63,115	32,390	37,207	5,551	7,823	2,655	3,138
September	61,856	64,163	33,932	39,842	4,919	5,937	2,773	3,590
October ..	66,354	69,792	38,349	46,979	5,408	6,795	3,103	3,608
November	67,246	71,101	39,125	44,637	5,154	6,645	3 147	3,680
December	69,143	68,979	43,508	47,011	5,838	6,744	3,334	3,730
January ..	64,850	62,853	42,388	45,114	5,913	6,707	3,274	3,742
February .	62,432	54,250	40,818	37,864	4,583	5,354	2,807	3,040
	735,874	783,854	449,618	504,589	62,769	71,857	36,022	40,995

	WINNIPEG		ST. JOHN		VANCOUVER	VICTORIA
	1898-9	1899-00	1898-9	1899-00	1899-00	1899-00
	$	$	$	$	$	$
March ...	5,968	6,756	2,148	2,391	2,818	2,689
April	6,240	6,916	2,254	2,494	3,024	2,848
May	8,683	7,472	2,513	2,910	2,784	2,700
June	7,397	8,211	2,592	2,606	3,768	2,509
July......	6,316	8,169	2,927	2,753	3,355	3,087
August ..	6,180	7,995	2,059	3,103	4,929	3,039
September	6,414	8,281	2,508	3,004	4,513	3,024
October ..	9,347	12,689	2,498	2,814	4,751	3,059
November	11,553	14,435	2,660	2,903	3,785	2,588
December	10,708	12,966	2,746	2,963	4,090	3,006
January ..	7,683	9,906	2,470	3,033	3,550	3,044
February .	6,209	6,702	2,212	2,342	2,881	2,324
	92,698	110,498	29,587	33,316	44,248	33,917

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THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE*

II. ONE CURRENCY FOR THE EMPIRE

IN entering upon the next phase in the history of Canadian currency and exchange, we have to deal with a very extensive and interesting experiment in currency regulation. This was the attempt, undertaken by the British Government in 1825, to extend the British currency and its standards throughout the Colonial Empire.

*Chief sources:
Dominion Archives; State Papers, Lower and Upper Canada.
Journals of the Assembly and of the Legislative Council, Lower Canada.
Journals of the Assembly and of the Legislative Council, Upper Canada.
The Laws of Lower Canada, Vol. VIII.
Statutes of Upper Canada. Revised 1831.
A History of Currency in the British Colonies. By Robert Chalmers, B.A., of Her Majesty's Treasury. With Appendix of Documents. London, 1893.
Review of the Proceedings of the Legislature of Lower Canada in the Session of 1831. (By Andrew Stuart). With Appendix. Montreal, 1832.
Considerations on the Currency and Banking System of the United States. By Albert Gallatin. Phila., 1831.
Montreal Herald, 1825.
Montreal Gazette, 1830.
Kingston Chronicle, 1825-31.

While the great wars were going on round the turn from the last to the present century, while the currency was demoralized and specie payment by the Bank of England suspended, throughout the Empire Britain made use of whatever coins she could command in exchange for bills on the Imperial treasury.

The internal trade of Lower Canada, so far as carried on with the French Canadians, employed almost entirely the old French currency, to which the Habitant clung as part of that cherished nationality which marked his independence of British institutions. But in the extensive payments of the British Government, in the wholesale and foreign commerce, and in the settlements of Upper Canada, the Spanish and American dollar, assisted by a miscellaneous fringe of gold coins, furnished the chief metallic currency and standard of value.

In 1816, however, Britain, chiefly with a view to preventing her silver currency from going abroad, definitely adopted a gold standard. Silver was made a token money by raising its face value above its bullion value and limiting its legal tender to forty shillings. Under improved conditions of British trade the foreign exchanges became more favourable. No premium on bullion for export threatened to exceed the seigniorage on British silver coins; consequently they remained as a permanent medium of exchange, and lent colour to the theory that not trade but legislation had relieved the country from its currency famine.

The coinage of the new silver currency being profitable for the Government, it was a matter of some interest to extend its circulation.

In 1821 the Bank of England resumed specie payment, and was followed by the other banks having paper issues. At this period, too, the Spanish American colonies were achieving their independence. Spain losing control of the silver mines, the supply of the Spanish dollar was checked. Further, the period from 1820 to 1824 was one of commercial distress in several of the colonies, particularly the West Indies and Canada, which had suffered in common with the United States.

In the face of this combination of circumstances, the success which had attended the readjustment of the British currency at home naturally suggested an extension of the system

to the colonies, especially as it promised to facilitate the constant payments which the Home Government had to make in most of them. It was resolved to make the attempt, and to introduce and promote the change by means of the payments to the troops and the purchase of military supplies in the various colonies.

The Lords of the Treasury, in a Treasury Minute dated 11th February, 1825, set forth the conclusions at which they had arrived, and the grounds on which they were based. They have had under their consideration the state of the currencies in the several British colonies and possessions abroad, as they affect the expenditure for the public service, both military and civil. The present time of peace affords an excellent opportunity to remedy the many evils and inconveniences which have accumulated during and since the last war. In most of the colonies the Spanish dollar is at once the prevailing coin in circulation, and the standard by which the values of all other coins are determined. Yet the rate at which it is paid out by the Government, namely 4s. 8d. stg., is not in accordance with its intrinsic value. As compared with British standard silver, the value of the dollar is slightly less than 4s. 4d., while at the prevailing market price for silver it is scarcely above 4s. Recent complaints with reference to the rates at which the Spanish dollars are paid are therefore well founded.

But, in further considering the subject, it has been found that recent conditions affecting the supply and standard of the dollar make it necessary to look for some other and better means of payment. Under the circumstances it appears to the Lords of the Treasury that at once the fittest medium for the payment of the forces, and the best standard of circulation for the colonies, will be the silver and copper currency now in circulation in Great Britain. Means, however, must be afforded of converting the currency at will into the standard gold coins of the United Kingdom, by means of bills of exchange to be issued at a specific rate.

They fully expect that since the British silver currency is issued at a nominal value higher than its bullion value, it will tend to remain in the colonies as a permanent circulating medium; while its ready convertibility into bills on Britain,

should maintain it at the same value in the colonies as in the mother country. The rate at which the exchange on Britain is to be fixed must be such as to prevent the coin being sent back to Britain, in preference to being converted into bills of exchange. Such a rate they estimate to be about three per cent. premium, for the majority of the colonies. Hence they direct that the proper officers be authorized to draw bills, in the colonies, on the Treasury Board in Britain, on the basis of £100 stg., payable in Britain, for every £103 stg. paid to the officer of the Treasury in the colony. On this basis the Lords of the Treasury will direct supplies of British silver coins to be sent to the various colonies to the extent of the probable needs of the Government payments.

But, as it may not be expedient to dispense with the use of the Spanish dollar all at once, even in Government payments, they recommend that it should be rated in future at 4s. 4d., and that all other coins employed be rated in proportion.

The necessary instructions to accomplish these objects are to be sent to the proper officers in the various colonies.

All existing contracts are to be fulfilled on the conditions stated in them; but in all future contracts the Commissariat should reserve to itself the option of paying the contractor either in British silver, or in bills on the Treasury Board, at the rate of £100 payable for every £103 of the contract. When any commissary has not sufficient silver on hand for the needs of his service, he is required to advertise for Spanish dollars, or other coins, to be offered in public competition for his bills on the Treasury. The money thus obtained is to be paid out at the rate of 4s. 4d. for the Spanish dollar.

Copies of this Treasury Minute were to be sent to the various departments of the Government having dealings with the colonies, and especially to the Colonial Secretary, Lord Bathurst, that the necessary instructions might be sent to the colonial governors, to insure due attention to the execution of the prescribed measures. Such are the essential features of the comprehensive scheme devised in 1825, and which it was confidently hoped would unite the whole British Empire in the use of one uniform medium of exchange. All parts of the Empire should henceforth hold commercial intercourse in one currency language, to the great benefit

of trade within the Empire and its extension beyond it. Wherever the British flag waved the British shilling would circulate, each an emblem of British rule.

To the eye of pure reason the scheme was faultless. Even official minds trembled on the verge of sentiment in contemplation of its vast imperial possibilities. But, unfortunately, the shield had another side, the colonial, from which it excited little enthusiasm. Hence, in the course of the official attempts to put the ideal in practice, it encountered the most unlooked for obstacles and caused no little bitterness. So far as actually put in operation, it produced many abnormal results, bringing to light numerous latent peculiarities of currency never before fully recognized or understood.

At present, however, we must confine our attention to the Canadian aspect of the subject. Though not realizing the expectations of its authors in any part of the Empire, yet it was in Canada that the measure most completely failed of its object. In order to give effect to the plan adopted by the Treasury Board, an Order-in-Council was passed, 23rd March, 1825, in which it is stated that in order to secure the circulation of the British silver and copper money in the colonies, "In all those colonies where the Spanish dollar is now, either by law, fact, or practice, considered as a legal tender for the discharge of debts, or where the duties to the Government are rated or collected, or the individuals have a right to pay, in that description of coin, that a tender and payment of British silver money to the amount of 4s. 4d. should be considered as equivalent to the tender or payment of one Spanish dollar, and so in proportion for any greater or less amount of debt;" "And also that British copper should be made a legal tender in all the British colonies, for its due and proper proportions of British silver money, as by law established in Great Britain, but that no person should be compelled to take more than 12d. in copper money at any one payment." The Lords of the Treasury and Lord Bathurst, Secretary of State for the Colonies, are to give the necessary instructions for putting this order into effect.

The only one among the British officials who seems to have doubted the feasibility of the measures taken, was James Stephen, afterwards Sir James Stephen, for many years by common con-

sent the ablest man connected with the Colonial Department, and after 1835 the Permanent Under Secretary of State for the Colonies. He was at this time legal adviser to the Colonial Office. On the 31st of March, 1825, in reporting on the Order-in-Council just referred to, he gave it as his opinion that His Majesty had no power to alter in this way, such rules as had been established by the legislatures of any of the Colonies, with respect to the value of the Spanish dollar or other coins. However, the matter being referred to the Attorney and Solicitor Generals, they reported that the Order-in-Council was quite legal. It was therefore sent to the colonies with instructions to have it enforced.

Lord Dalhousie, then Commander of the Forces in North America and Governor of Lower Canada, reports to Bathurst on Dec. 20th, that he had called upon the King's law officers in Lower Canada to prepare the draft of a proclamation for giving effect to the instructions sent him, "respecting the establishing of the British metallic currency in this colony." But he has received from them a report, which he encloses, giving it as their opinion that such a proclamation would be an infringement of an act of the Legislature of the Province regulating the currency. By the existing act the sterling value of the dollar is fixed at 4s. 6d., while the proposed measure would reduce it to 4s. 4d. The object of the proclamation, they say, can only be accomplished by an act of the Canadian Legislature. Dalhousie sees no alternative, therefore, but to wait for the meeting of the Legislature in January and recommend the measure to it, yet he has to confess that he has little hope of the Legislature altering the existing regulation of the currency.

When this despatch with the enclosed report was laid before Stephen for his advice as to the next move, he simply said "I told you so," and recommended that the law officers of the Crown, who had over-ruled his opinion, should be called upon to show how the Governor of Lower Canada could remove the objection and issue his proclamation. The matter was of some importance, for, as he remarked, now that the measure is blocked in Lower Canada the other colonies having representative government will get wind of it, and will be apt to follow the

example set. However, they declined to take up the challenge, and Dalhousie was left to do what he could with the Legislature of Lower Canada.

On Jan. 21st, 1826, Dalhousie laid the matter before the Assembly, together with the regulations and instructions sent him. His unpromising forecast of the attitude of the Legislature towards the measure was quite fulfilled, for the Assembly showed no anxiety to deal with the subject. When, over a month later, they took it up, apparently at the special request of the Governor, it was only to refer the whole matter, with the documents furnished by the Governor, to a committee of five with instructions "To enquire into and report on the expediency of enacting that no coin shall be held to be a legal tender, other than such coins as are legal tender in the United Kingdom, or in the United States of America, or what other alterations it may be expedient to make to the laws now in force declaring what coins shall be a legal tender." And that is the last we hear of it in that quarter.

The Legislative Council, however, to whom the matter had also been referred by special message, in an address to the Governor gave reasons for their opposition to the measure. They admit that it is a matter of indifference what the real value of a money token may be, so long as it is redeemable in coins of standard value or their equivalent. But the British silver which the Home Government is anxious to introduce as the Canadian medium and standard is of such a character that if, on account of the fluctuations in exchange it were found expedient to send it to Britain, it would not be received there as legal tender for more than forty shillings. The remainder would simply drop to the value of bullion, which is considerably below its face value. As regards the mere circulation of the British silver in the colony, they are quite willing that it should be encouraged; but this requires no alteration of the existing law which provides for its circulation on a par with the Spanish dollar. Finally, they object to the proposed change as injuriously affecting the large number of feudal rents and dues in the province, where accounts are kept in livres and sols connected with the Spanish dollar in the ratio of six livres to the dollar.

Such was the attitude of the Council, whose tone was normally strongly British, and therefore usually in conflict with that of the Assembly, which was equally strongly French Canadian.

In the meantime the Lords of the Treasury, being informed of the difficulties which had arisen in Lower Canada in connection with the carrying into effect of the proclamation, stated that they would refrain from giving any further instructions on the subject until they learned what action the Legislature of Lower Canada proposed to take. But they took occasion to point out to the Colonial Office that the absence of British coins from the currency of Canada was due to the incorrect manner in which the different coins had been valued, and especially the silver coins. The British coins have generally been placed at a lower value than the foreign coins, thus leading to their export. The British crown is rated in Canada at 5s. 6d. cy., and by the same standard the valuation of the dollar, Spanish and American, should have been 4s. 8¾d. instead of 5s. as at present. Again the French crown should have been rated at 5s. 2d. instead of 5s. 6d. as at present. But the British crown which was thus rated at 5s. 6d. was coined at the rate of 5s. 2d., face value, per ounce of silver, whereas under the new coinage the crown is now issued at the rate of 5s. 6d., face value, per ounce of silver. This should have the effect of correcting the former under-rating of the British crown and will now cause it to be slightly over-rated as compared with the foreign coins.

Thus the Lords of the Treasury appear to have reached the conclusion that, whether the Canadian Legislature gave effect to the wishes of the Home Government or not, the natural course of exchange would operate to bring the new British silver into circulation. This would be further assisted by the policy to be pursued in the payment of the troops and the purchase of supplies, which were entirely under Imperial control. Hence when the Treasury was informed, in the course of the summer, that the Legislature of Lower Canada would take no action, they stated to the Colonial Office that it did not seem necessary to press this matter further upon Lower Canada.

In Upper Canada the Home Government was apparently somewhat more successful. But the situation in Upper Canada differed considerably from that in the Lower Province. In

Lower Canada, as already remarked, a large and important section of the French Canadians possessed small individual hoards of specie, composed almost entirely of old French coins, much worn and considerably over-rated. They were distrustful of paper money, and exchanged it as speedily as possible for coins. In this exchange local prejudice and the interests of the banks favoured French silver. Hence Canada became a haven of rest for all the maimed and wayworn French coins on the continent. Lower Canadian accounts, rents and contracts were chiefly specified in French currency on a silver basis. To alter the value of the French silver, or to adopt a new standard, was therefore a very serious matter for the French Canadians. Hence the radical objection to any such change as that proposed by the British Government.

In Upper Canada the situation was very different. Among the Anglo-American settlers and traders there was no tendency to hoard coin. The few who had money readily invested it. Bank notes, Canadian and American, circulated freely and constituted the greater part of the exchange medium, even fractional currency for change being scarce. Alterations in the values of coins which few possessed could not affect many interests. A change in the currency standard, however, would have been a serious matter, as that would immediately affect economic obligations and contracts.

When, therefore, the proposals of the Home Government with reference to the currency reached Upper Canada, the people heard with gladness of the prospect of receiving a large supply of British silver and copper coins through the channel of Government expenditure. They received with meekness the statement of the British experts that the dollar was over-rated in sterling, and the British silver under-rated in currency, and they were quite willing that this should be remedied. But as to adopting the British monetary standard, that was quite another story, and the idea was quietly ignored in the action taken by the Provincial Legislature.

It was early in January, 1826, when Governor Maitland, in a special message, laid the subject before the Assembly of Upper Canada, together with the documents furnished him from Britain, and before the end of the same month the responding

act was passed. In this act, the Legislature, without in the slightest altering the existing currency system with the five shilling dollar as its basis, simply raised the value of the British silver and copper coins. They made British silver unlimited legal tender at the following rates:—The crown to be 5s. 9d. instead of 5s. 6d. as before, and the shilling to be 1s. 2d. instead of 1s. 1d. as before, with all higher and lower denominations in the same proportion. British copper is also made legal tender in the same proportion to the silver as in Britain, but the amount of legal tender in copper is limited to 1s. currency, and 10d. in British copper is declared equivalent to 1s. currency. Further, to facilitate payments it is enacted that 17s. 4d. in British coins shall be equivalent to 20s. currency. The act had at least the effect of further increasing the differences between the legal regulations of the currency in the two Provinces.

While the British Government got but little assistance from the Canadian Legislatures in carrying out its Imperial currency scheme, it had still the chief instrument of its purpose in its own hands. It entirely controlled the military expenditure in the colonies, and that was then a very considerable factor in the economic life of Canada, being especially influential in the Canadian exchanges. In this field the British Government was free to experiment, so the payment of the troops and the purchase of supplies were regulated accordingly. The command of the exchanges was also employed to the same end.

Some £30,000 sterling in British silver, together with a quantity of British copper coins, were sent out to Canada on Government account. In August, 1825, formal notice was given in the Canadian papers, "That the pay of His Majesty's troops, military departments, out-pensioners and certain other appointments, in this command has been authorized to be issued at the par of 4s. 4d. sterling per Spanish dollar, commencing from the 25th of May last, and that the issue of British silver and copper money (of which a consignment has been received from England) when established to take effect, will be at its nominal value. The same also to apply to all payments to be made into the Military Chest." All tenders sent in to the various commissariat offices, in response to public advertisements for supplies, must be stated in British money. It is to be a condition

of all such contracts that it shall be at the option of the commissariat officer to pay for all future contracts, either in specie at the foregoing rates, or in bills of exchange on His Majesty's Treasury, at thirty days after sight, at the rate of £100 in bills on the Treasury for every £103 due on the contract. With reference to the exchanges, notice is given that British money will be received into the Military Chest, in sums of not less than £103 from one individual, and that bills on the British Treasury will be given in exchange for it at the rate of £100 in exchange for every £103 in British silver of standard quality.

Before tracing the practical effects of these measures we have to note some special circumstances attending their introduction, and connected with payments to be made into the Military Chest.

In 1825, the Home Government, under the influence of Mr. Huskisson, made several important concessions to colonial trade in modifying the old Navigation Laws and permitting a freer trade between the colonies. One phase of this was the permission granted to the East India Company to send its teas directly from China to Canada, instead of through commercial houses in Britain. Messrs Forsyth, Richardson & Co., of Montreal, were appointed agents of the East India Company for the sale of their teas. By an arrangement with the British Treasury, the receipts from the sale of the teas were to be paid into the Military Chest in Canada. This arrangement was notified to Messrs. Forsyth, Richardson & Co., and, in accordance with the new plans of the British Treasury, they were instructed to make the payments in specie.

On receiving these instructions the agents wrote to Mr. Turquand, in charge of the Military Chest, on March 31st, 1825, stating that very serious difficulties would arise if the payments were to be made wholly in specie. They point out that there is very little specie in circulation in the colony, since the greater part of the currency consists of bank notes, and especially the notes of the Bank of Montreal. Payment for the teas will naturally be received in these notes, which, in turn, will be readily accepted for any payments which the Government has to make in Canada. As the bank is thoroughly reliable, they urge that its notes may be received, in part at

least, in the payments to be made to the Military Chest. If specie alone is demanded it must be brought from the United States, an operation which is both expensive and risky, and in spring and autumn almost impossible. What supply of specie there is in the country is chiefly in the shape of small silver coins. The dollar pieces and gold, being at a premium, have mostly disappeared. They then proceed to expatiate on the credit and stability of the Bank of Montreal and the entire safety to the Government in accepting its notes. Should there be any doubt on this point they are quite willing to furnish additional security. It is proposed that the Military Chest should accept the bank notes to the extent of £25,000.

It is observable that in this appeal the Bank of Montreal alone is referred to, and the anxiety felt is in the interest of the bank, and not of the agents of the Company, who could have required the bank to furnish specie for the notes which they received for the teas. The promise of the bank to redeem its notes on demand is urged as one of the reasons for the security of the notes. The simple fact was that the bank would have found it rather difficult to redeem its notes in any quantity at that period, and the anxiety of Messrs. Forsyth, Richardson & Co. arose from the fact of their being personally very much interested in the bank.

At the same time it was quite true that the Government would have had no difficulty in obtaining its supplies for the bank notes. The merchants were quite willing to take any kind of respectable currency for their wares, and only the hoarding French-Canadian was to be reckoned with.

Turquand, in forwarding this letter to the Treasury, confirms the statement as to the scarcity of specie and the practical universality of bank notes as a medium of exchange. He admits that the Military Chest could readily employ the bank notes, though they are not legal tender, yet the privilege of paying in paper should be strictly confined to the proceeds of the sale of the East India Company's teas.

When the matter was brought up before the Treasury Board they replied that the very argument urged in favour of accepting the bank notes, namely the dearth of specie in the colony, compels them to decline the application in order that

pressure may be applied to bring specie into the country and retain it there. In other words, they see in this an opportunity to promote the special object they have in view, by supplying the want of specie in the colony with British silver.

The following year, 1826, a similar case was presented by the Canada Company which applied to be permitted to pay part at least of its obligations to the Government in Bank of Montreal notes. But the Company is informed that a similar request has been denied to the agents of the East India Co., and cannot, therefore, be granted to it.

A letter from Turquand to Major Hillier, Secretary to Governor Maitland of Upper Canada, dated 21st Feb., 1824, throws considerable light upon the relation of the Bank of Montreal to Government payments about this time. It appears that, in providing funds for military purposes within the colony, Turquand had an arrangement with the Bank of Montreal, whereby he drew bills upon the Treasury in Britain and transferred them to the bank at something of a premium. Upon the bank, in turn, he either drew cheques himself or transferred the right to do so to others, in this case to Governor Maitland who drew upon the bank in payment for his military supplies. These drafts were of course paid by the bank in its own notes. Thus the net result of the transaction was that the Bank of Montreal purchased bills on the British Treasury with its own notes, and then sold its own exchanges on London at a considerable premium to merchants in Canada or the United States.

A letter to the Kingston *Chronicle*, of the same year, declares it to be well known that the specie which comes to Kingston for the payment of the troops, etc., is not put into circulation, but is paid over to the agent of the bank (Montreal) who issues the bank's notes and sends the specie back to Lower Canada in the very cases in which it arrived. Some five years later, Commissary General Routh states that the contractors on the Rideau Canal and elsewhere, instead of receiving cash, take a draft on Montreal, payable in dollars, and they dispose of this at a premium for bank notes, with which they pay their men and obtain supplies.

At the time of inaugurating the new currency scheme it was still one of the anomalies of Canadian public finance that

duties were levied on imports to Canada by both Imperial and Provincial statutes. The Imperial statute was 14, Geo. III., cap. 88 (1774), and the duties exacted under it were required to be paid in sterling, whereas the Provincial duties were collected in Halifax currency. Up to 1825 the sterling rating of the dollar had been 4s. 6d. But, on the basis of the new British coinage, it was accepted at 4s. 9½d. after 1816. Then, in accordance with the last move, it was reduced in 1827 to 4s. 4d. This had the effect of considerably raising the duty for Canadian importers when they paid, as they commonly did, in dollars or other coins rated on that basis. The Canadian merchants considered the action of the Treasury Board as illegal and refused to pay the extra duty. The result was a law suit in which the question was argued with considerable show of reason and not a little subtlety on both sides, but the judges decided in favour of the Treasury.

At first sight it might appear that, in consequence of all the influences brought to bear upon the Canadian currency, the new policy of the British Treasury should have been fairly successful and that a large amount of British silver should have been infused into the circulation, which might in time have led to the adoption of the British standard. Yet such was not at all the result, and for the following reasons:

The specie sent to Canada by the Government was not greater than the requirements of her international exchanges. Indeed, the more the British Government spent in the colony the greater the quantity of goods purchased abroad, and therefore the greater the amount of exchange required to pay for them. Most of those supported by the Imperial payments were not commercial producers, and hence did not furnish additional exports to meet the increased imports. From the very necessities of a poor, though developing country, the imports tended to out-run the exports, including all specie of standard value. Such being the case, the British silver sent to the country always found itself at a premium, and was eagerly bought up by those who had payments to make to the British Treasury, either for duties or in return for bills of exchange.

It had been hoped that, inasmuch as the new silver coinage had, in virtue of its being over-rated, remained steadily in

Britain, it would likewise tend to remain in circulation in the colonies. But the inference was not well founded. The new silver coins remained in circulation in Britain because there was no other country which would receive them at their face value. In the colonies, however, these coins found a country which would receive them at their face value, namely, Britain itself. So that, whether in the purchase of exchanges or in actual shipment, they were as good as gold in their command of the British market. Their intrinsic deficiency counted only with reference to the American exchanges, and that was one chief reason why they were confined to the function of procuring British exchanges. For all purposes of internal trade, the bank notes and the greatly over-rated Spanish pistareens and French coins were still used.

Thus every one of the expedients adopted by the Treasury for insuring the circulation of the British coins in Canada, directly operated to put them out of circulation, for no sooner were they paid out of the Military Chest than they returned to it through the medium of the banks or the importing merchants.

As the currency chiefly employed to buy up the British silver was the bank notes, the consequence was that the chief result of the new policy was to increase the circulation of bank notes, which were all expressed in dollars.

Though at first the British coins steadily returned to the Commissary General for the purchase of exchanges at the fixed premium of three per cent. yet it was afterwards found to be more economic to export the coin. The British coins leaving the country, the Military Chest itself began to depend on dollars for its supply of specie. The Treasury had, therefore, to meet the new situation, and the result was that by the middle of 1828 the premium on Government bills was reduced from three to one and a half per cent., or £101 10s. were accepted for a bill of £100 on the Treasury, and similarly in the case of the Government contracts. This had the effect of checking the further export of British silver, though it had no influence in keeping it in circulation.

British silver being exclusively associated with the British exchanges, the values of the coins themselves fluctuated with the rates of exchange. Thus the British half crowns, which

were legally rated in Upper Canada at 2s. 10½d., and in Lower Canada at 2s. 9d. when exchange was high, passed for 3s., and when it declined for 2s. 11d.

After a few years of unpromising experiences it became apparent to the British Treasury that if any real progress was to be made it must be accomplished by changing the basis of legal tender in Canada, which meant a legislative readjustment of the currency.

It must not be supposed that the ill success of the British authorities in their efforts to introduce the Imperial coins and standard was due to the fact that the Canadians were entirely satisfied with the existing currency system. The business men of both the Canadas were anxious to get rid of a currency condition which both Montreal and Kingston papers agreed in describing as "a disgrace to any civilized nation." The country was at this time a very paradise for the coin collector, since its metallic circulating medium consisted of the odds and ends of the coinage of all the commercial nations. Had it not been that the bank notes formed the greater part of the circulating medium it would have involved much time and patience on the part of the merchants to simply keep account of the money received for their goods. The very difficulty of dealing with such a medley of coins greatly favoured the circulation of the bank notes, and thus reduced the chief practical evils of the metallic currency to the smaller coins used as change.

Gold coins were rarely met with. Now and again a glimpse of a sovereign was to be had while on its way from the pocket of an immigrant to the frontiers of the colony. The copper currency was in a worse condition, being composed chiefly of discarded British half-pence and farthings, various sorts of tokens, native and foreign, and even brass buttons beaten smooth. Still the supply was inadequate to the needs of the country. In Upper Canada the enterprising firm of Edward Leslie & Sons, who had stores at Dundas, York and Kingston, finding constant inconvenience from the want of small change, and especially coppers, determined to import on their own account a considerable quantity of copper tokens. Their first importations were absorbed so rapidly that they felt compelled to continue the operation from year to year. Other merchants

sought supplies from them, but, being doubtful of the legality of their enterprise, they declined to furnish them and confined their issue to the needs of their own business. It was yearly expected that either the Government would meet the want or that one or more of the banks would be authorized to issue tokens. These expectations not being fulfilled Messrs. Leslie & Sons in 1831 formally applied to the Government to either furnish an adequate copper currency or sanction their method of meeting a public want. Governor Colborne, in forwarding this petition to the Home Government, stated that about £50,000 in copper coins would be necessary to adequately supply the Province, and failing that importations such as those mentioned in the petition would be constantly received.

Among the small silver coins used as change the pistareens had become the most numerous, chiefly in consequence of the reform in the American currency. The gravitation of pistareens towards Canada is no mystery when it is known that here they were valued at one shilling, or 20 cents, while in the United States they were accepted at only 17 or 18 cents. The pistareens and their halves were among the most worn and defaced coins in circulation.

But while the people were not at all satisfied with the existing currency, there were few of them disposed to accept the British standard. The fact was, that though still using, as a nominal and illegal standard, the Halifax currency, represented by no coins whatever, the business of the English section of the country was being done on the basis of the American dollar, which was also the basis adopted by the banks, their notes being all expressed in dollars. Hence currency reformers in Canada already strongly favoured the system which has since been worked out, namely, a special silver and copper coinage for British North America, expressed in the American decimal currency of dollars and cents, but coined at a higher value than the bullion in it to prevent its being either melted down or exported.

However, the Home Government was not yet prepared to give up the struggle for a single Imperial currency, and once more turned its attention to the Canadian Legislatures.

In January, 1830, Sir James Kemp, in his speech at the opening of the Legislature of Lower Canada, introduced the

subject of the currency. He intimated that some measure was necessary to prevent the circulation of the pistareens and other small silver coins at a value greatly in excess of their intrinsic worth. He also urged that steps be taken to insure the circulation of British silver at its real value. His Majesty's Government, he says, has sent out a considerable quantity of it with a view to its ultimately becoming the common circulating medium of the colony.

Early in the session the matter was taken up in the Assembly and referred to a committee. The Committee ordered the Receiver General, the Commissary General of the Forces and the cashiers of Quebec and Montreal banks to furnish statements of the numbers of the legally rated coins which they have had in possession on the first of each month, during the years 1828 and 1829, and to give any other information they can on the subject of the currency.

The Commissary General stated that the only coins received into the Military Chest were dollars, half-dollars and English money. French coins were not offered on account of being over-rated in circulation. Of the gold coins only a few sovereigns were received because they were accepted at their face value. The average amount of specie in his possession was about £200,000 in Upper and Lower Canada, of which he estimates £150,000 to be in foreign and £50,000 in British coins. The cashier of the Quebec Bank sends in a list which indicates that the chief coins in the possession of the bank were dollars, half-dollars, quarter dollars, French crowns and half-crowns. Of gold coins he has seldom more than £150 worth, including, however, samples of seventeen different coins, but chiefly sovereigns, half-sovereigns, half-eagles and Mexican doubloons. The cashier of the Bank of Montreal makes a very full report, showing that the chief silver coins in the hands of the bank were dollars and half-dollars, Spanish and American, French crowns and half-crowns, with a considerable quantity of pistareens or shillings. The statement of the coins in the Provincial Treasury shows that in quantity they range as follows:—Dollars, half-dollars, crowns, pistareens, half-crowns, quarter-dollars and York shillings or sixpences.

In addition to these statements, the committee was supplied with a great many important facts and some doubtful argument by Commissary General Routh, who presented the case for the British Government in a number of communications from October, 1829, to February, 1830.

While recognizing many of the difficulties in the way of adopting a change of standard, and especially the peculiar interests associated with the French coins in Lower Canada, he still urges the adoption of the sterling system and the breaking connection, as far as possible, with the Americans and their currency.

After discussing the matter at considerable length, to the refuting of many and the convincing of few, he sums up the practical aspect of the situation in the following propositions:

"It is expedient to fix the corresponding values of the English coins, and to make them a legal tender at those rates."

"It is expedient to establish sterling money as the money of account, and exclusively recognizable in courts of law."

"It is expedient to restrict the bank notes on the renewal of the several charters, to sums of five pounds sterling and to prevent their issue under that amount."

"It is expedient to repeal the provincial Act of Parliament which fixes the rate of the Spanish dollar at 4s. 6d. sterling, establishing it for the purpose of calculation at 4s. 4d. sterling, which is found to be the intrinsic value of that coin, whilst such coins shall remain legally in circulation."

"It is expedient to fix the rates at which the old French coins and pistareens are to pass, and to name a period from which that regulation shall commence."

"It is expedient to name a period after which foreign coins shall not be considered a legal tender, or otherwise than bullion."

These propositions sufficiently indicate how radical was Mr. Routh's scheme.

The committee of the Assembly having accumulated a miscellaneous mass of facts, opinions and special pleadings, and having attempted to digest them, framed a bill which was reported

on March 9th, 1830. The bill adopted the sterling rating of the dollar at 4s. 4d., and revised the coinage list. These gold and silver coins and none other to be current at the following rates :

	s.	d.
GOLD COINS		
British sovereign of standard weight	23	1
Half sovereign	11	6½
SILVER COINS		
British crown	5	10
British half-crown	2	11
British shilling	1	2
British sixpence	0	7
Spanish milled dollar (weighing 17 dwt. 8 grs. and being in fineness 8 dwt. worse than British standard)	5	0
Spanish half dollar (weighing 8 dwt. 16 grs. and of the same fineness)	2	6
Spanish quarter dollar	1	3
Spanish eighth dollar	0	7½
Dollar of the United States	5	0
Half dollar of the United States	2	6
French crown (weighing 18 dwt. 18 grs.)	5	6

The quarter and eighth dollar pieces were to be legal tender to the extent of £10 currency, the others to any amount. British copper coins were to circulate freely, but to be legal tender only to the extent of 1s. currency, 10½d., British copper to be equal to 1s. currency.

Provision is made for the calling in by the Receiver-General of the Spanish pistareens and French half-crowns, and the giving of lawful money in return to the extent of their nominal value as previously rated.

In the matter of gold coins the bill is quite radical as it drops the whole of the previous list and adopts the new British sovereign alone. In the silver list the dollar remains at 5s., while the French crown, in deference to the French Canadian element, is still rated at 5s. 6d., though it had fallen to 5s. in the neighbouring States, but the other French pieces and the pistareens are disfranchised. The British silver is rated at its token value in gold.

The bill, however, did not pass, being regarded by the majority as too radical. A rough practical measure, dealing merely with pistareens and bank notes, took its place and was rushed through, apparently under the influence of what was being done in Upper Canada. The new act consisted simply of two clauses. The first reduced the legal rating of the pista-

reen from 1s. to 10d. and its half to 5d., and the second excluded from circulation in Lower Canada any bank notes, or other notes, under five dollars, except those of the incorporated banks of the province.

I have said that this measure was apparently hastened by the action of Upper Canada. In the Upper Province an ill-digested act was passed, March 6th, which was intended to deal with the accumulation of depreciated silver coins which then formed the metallic currency of the province. It was a short act formally excluding from the list of legal tender coins all British coins which were depreciated more than one twenty-fifth of their standard weight, together with all pistareens, French crowns, French pieces of 4l. 10 sols and of 36 sols, and all higher and lower denominations of these coins, and it was declared no longer penal to counterfeit them. The result of this hasty measure was that, while no regular provision had been made to supply the province with an adequate fractional currency, practically the whole of the change then in use was suddenly deprived of the privilege of legal tender, and hence of the benefit of any rating whatever. Thus while, in default of a substitute, the people were compelled to use the disfranchised coins as change, yet their current rating was demoralized, and the evils which formerly existed were multiplied. The people were left to bring order out of chaos as best they could. The Kingston merchants set the example by calling a public meeting in the Court House, at which it was resolved to accept French half-crowns at 2s. 6d., pistareens at 11d., and half-pistareens at 7½d., these being the chief coins used as change.

During the same session the currency question was taken up by the Legislative Council of Lower Canada. A bill was introduced there, under the influence of the Executive, to assimilate the money of the province to that of Great Britain. It was referred to a committee which took a good deal of pains to obtain from various quarters expert information on the subject of currency standards and equivalents. As a result they discovered so much disagreement among the doctors that they were fain to confess themselves rather more in the dark at the close of their investigation than at the beginning of it.

The committee was divided on the question as to how a change from currency to sterling standard would affect contracts

and vested interests. Some contended that it would greatly affect values, others that it would make no appreciable difference. The latter regarded the change as little more than a matter of terms, and held that securities would be worth as much under any other name, but they need not have gone further than those Canadian merchants who were suffering from a change of standard in the case of the customs duties, for vigorous proof that the adoption of the sterling standard was not a mere matter of names.

On certain points, however, the committee were unanimous. They were in favour of calling in all the deteriorated coins in circulation and redeeming them at their nominal value at the public expense. In this they agreed with the committee of the Assembly. It may be interjected that Commissary General Routh had said in his haste that he believed the Home Government would redeem the colonial currency to get rid of it. Safeguards, however, would be needed to prevent such coins from being brought into the province for the profitable purpose of being redeemed.

They further agreed that a supply of proper copper coins should be imported to "supersede the necessity of using the trash at present in circulation."

But, unfortunately, the points on which the committee managed to agree were just those on which the Council could not originate bills as they involved the appropriation of money. As regards those points upon which they had both the power and the will to legislate, they found them under discussion in both Britain and the United States, and therefore considered it inexpedient to do anything at the time.

Before anyone had the courage to take the question up again the political troubles of the country had obscured all minor issues. Much the same is to be said of Upper Canada.

Having once more failed to accomplish anything of any consequence the British Treasury seems to have given up the struggle, though the commissariat regulations were not withdrawn till 1838.

We must now return to deal more particularly with the part played by the banks during this period.

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THE TAXATION OF CORPORATIONS IN ONTARIO

AN Act was passed in 1899* by the Legislature of Ontario which effected a very serious change in the principle of taxation of financial corporations, and of other joint-stock companies rendering public services. Prior to the passing of this Act the taxation of companies was practically altogether in the hands of the municipalities, and no special taxes, with one exception, were levied upon corporations. This exception was the case of banks, which were charged one per cent. upon their average circulation from 1841 till 1867 by the Province of Canada, and from 1867 till 1870 the same amount by the Dominion of Canada.† The municipalities were permitted‡ to levy taxes upon the income derived by individual shareholders from bank and other stock, but were not permitted to levy taxes upon the capital stock of any bank or similar company. The new Act imposes on behalf of the Province a new special tax upon Banks, Loan Companies, Insurance Companies, Railways, Telegraph, Telephone and Gas Companies. These taxes are assessable upon a different basis in each case. In the case of banks the tax is imposed (a) upon the capital stock of the bank, chargeable whether the head office is situated in the Province or not; and (b) upon each office or branch of the bank within the Province. In the case of insurance companies§ the tax is levied upon the gross premium income of the company within the Province, with the proviso that in case of re-insurance the tax is payable only once. Where an insurance company,

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*62 Vict. (2) c. 8, Stat. of Ontario.

†B. E. Walker "A History of Banking in Canada" Toronto, 1899, pp. 38 &c. The revenue from this tax amounted to £10,277 in 1842, and to £22,142 in 1856. "Canada Directory" (Statistics by Hon. W. Cayley).

‡R. S. O. 1887, Chap. 193 s. 7, c. 1 17.

§Mutual Fire and Life Companies, Mutual Live Stock Companies and Friendly Societies transacting insurance business are exempted.

foreign to the Province, has a small premium income within the Province, and where such a company has $100,000 or more invested in the Province the tax is levied partly upon the gross premiums and partly upon the income from investments. Loan companies are taxed upon their paid-up capital. British companies doing business in Canada are, however, taxed only upon funds employed in Canada. Trust companies are taxed partly upon their paid-up capital and partly upon their profits. Railways are taxed at a rate per mile of line. Electric railways and tramways (excepting street railways) are excluded. Street railways pay for lines within the city only. Telegraph, telephone, gas and electric lighting companies pay upon their paid-up capital. Companies exploiting natural gas in Ontario must pay a tax (practically a license fee) of $1,500 whether they produce or transmit the gas, and in addition a percentage upon their gross receipts.* Express companies pay a tax on each 400 miles of line over which their business extends. Sleeping car and parlour car companies pay upon the amount of capital invested in rolling stock employed in Ontario during the preceding year.

Certain provisoes are added. For example: The Lieutenant-Governor-in-Council may reduce the amount of tax upon banks whose head office is not in Ontario, provided the business done by the bank in the Province is small. Insurance companies and loan companies are relieved of municipal taxation except as regards the individual shareholders within the municipal jurisdiction. Premiums are not assessable by a municipality.

Under the British North America Act, while the Dominion Parliament may raise money by "any mode or system of taxation,"† the Provincial Legislatures may impose "Direct taxation within the Provinces in order to the raising of a revenue for Provincial purposes." The right of the province therefore to impose direct taxation does not admit of doubt; but the expediency of imposing it in certain cases may fittingly afford matter for inquiry.

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*Excepting small domestic companies which are exempt under sec. 4.

†30 and 31 Vict. c. 3 (B.N.A. Act), sec. 91, c. 1, 3.

The special taxation of corporations has arisen naturally out of the special privileges which corporations enjoy. Apart from the privilege of monopoly or quasi-monopoly with which many corporations, especially those rendering public services are necessarily endowed, the mere limitation of liability may be regarded as a benefit conferred by law upon corporations for which they should be called upon to pay. The tax system of Great Britain has barely recognized this. Excepting in the cases of stage coaches and later of railways, which were subject to a passenger tax, and of banking corporations which have been subject to a license duty for each branch, and more recently in the case of the stamp duty which each company on registration as a joint-stock concern has to pay upon its nominal capital, there has been in Great Britain practically no development of the special taxation of corporations. Companies, with these exceptions, are on the same basis as private individuals. They are charged income tax upon their net earnings as disclosed in the dividends they pay. The principle of special taxation of corporations has, however, been carried very far in the United States, so far indeed that in some States the revenue from these special taxes forms a large part of the total revenue.* It might even fairly be held that the dominant influence of corporations in the United States is largely due to the fact that the State has become a partner in the enterprises they control. In certain of the States the system of special taxation has become exceedingly complex. In Pennsylvania, for example, corporations are taxed both upon the dividends declared and upon the gross receipts. Where no dividend is declared the tax is levied upon the capital of the company. In Maryland corporations pay taxes not only upon their paid-up capital, but also upon their bonds.† The method adopted in the Ontario Act of 1899 is evidently suggested by the experience of the United States. The systems of special taxes like the general tax systems of the United States cannot be said to be the outcome of any definite theory of taxation. Any one of them exhibits too great incon-

*In Pennsylvannia and Massachusetts the yield of corporation taxes in proportion to that of taxes on personal property is as 3-1.

† Cf. R. T. Ely, "Taxation in American States and Cities," New York (1888) p. 328.

sistency for any supposition of that kind. They may be regarded rather as the outcome of a congeries of suggestions and compromises. This is also true of the Ontario Act. We find that while banks, loan companies, trust companies, etc. are taxed upon their paid-up capital—upon the only instrument of their business, and while railways are taxed upon their mileage, that is, upon one of the instruments of their business, insurance companies are taxed upon a portion of their receipts—not upon the interest earned by their invested funds which is supposed to be reached otherwise, but upon their premium income—upon the amount which they annually absorb from the Province as it were. Again the sleeping-car companies are taxed upon the whole of the instruments of their business, while the express companies are indirectly taxed, since they do not own the lines by means of which the tax imposed upon them is measured. On the other hand industrial corporations are not subject to a special tax at all. In all cases where capital is taxed bonds are not included, so that it would appear on the face of it to be advantageous, so far as liability to taxation is concerned, for joint-stock companies to carry on their business with a small paid-up capital and a large bonded indebtedness. It is small wonder that there should be lacking any consistent principle in the imposition of these special taxes on corporations. The conditions which have given rise to them are almost altogether new. They are the outcome of a new phase of associative effort in which it becomes apparent, not that such effort needs encouragement, as was of old thought to be the case, by limited liability acts and the like, but that the privilege of limited liability and still more the privilege of quasi-monopoly where that follows are valuable considerations delivered by society, for which society is entitled to be paid. In the transparent novelty of the situation there is, however, the possibility of the perpetuation of an illusion—that in taxing corporations we are not taxing individuals. In the popular mind while some corporations are associated with certain prominent personalities who may or may not really own any considerable part of the stock, corporations are in general supposed to possess an entity apart from the persons who compose them, and that taxes paid by them are therefore not taken from the pockets of individuals, but

are taken from an abstraction whose character is open to suspicion. This illusion is similar in kind to that which is prevalent about the taxation of land, the idea in both cases being that a tax may be paid by a thing and not by a person. From the point of view of the taxpayer the important question is whether the tax is paid by that person in accordance with any definite principle whether of service rendered to him or ability on his part to pay. If the tax is not based on some principle which will make it equitable in its incidence, *force majeur* may collect the tax but cannot justify it. From the point of view of the economic interest of society the problem is what effect has a special tax upon the particular enterprise or class of enterprises upon which it is imposed? An important part of this problem is as to the ultimate incidence of the tax. A small tax upon a large enterprise may have no appreciable effect. It may not be possible or worth while even if possible to endeavour to shift it, but in certain cases to which well known theoretical considerations apply the tax will tend to be shifted upon the shoulders of the public. In such cases the advantage of setting in motion the economic impulses which are inevitably costly is not apparent. Even in a case where the price of a service, street transportation for example, is fixed by law, a tax may have the effect of retarding the reduction of the price or of militating against the efficiency of the service.

If a special tax amounts, as in some cases in the United States, to three, four or five per cent. upon the capital invested, there can be little doubt that this form of discrimination against the investment of capital in particular forms must lead to the diminution of competition of capitals in such forms. Moreover the risk of increasing taxation in such cases is a very real one and the remoter effects of these movements may ere long be seen in the depreciation of the character of the capitalists who are attracted by investments which offer little prospect of legitimate gain, but which may to them seem to afford the means of large adventitious gains to offset the risk of overwhelming taxation. This depreciation of character may be held without much straining of the argument to have been an important feature in the growth of the huge corporations that appear by

all accounts to be a threatening factor in American finance. It may not be that special taxation is the best way of "disarming the trusts."

There is unfortunately a rather scanty literature upon the taxation of corporations.* The reason of this has already been suggested; but while the conditions are new and the effects of special taxation well worth studying, there is little reason to suppose that any new economic forces have been brought into existence by the imposition of special taxes. The fairly well understood processes of shifting may perhaps meanwhile be regarded as going on under the new conditions very much as they have always done. In cases of absolute monopoly where a rack price is obtained the tax is *ex hypothesi* unshiftable; where the atmosphere is one of perfect competition the tax may be shifted. Even in the case of a monopoly where the price is fixed by law or by contract with the public authority, as street railways, gas, etc., the tax may in effect be shifted upon the public in the manner already indicated.†

It may be useful to take the Ontario Act of 1899, and to examine briefly the methods adopted for the taxation of corporations.

One may premise that to some extent the economic situation in this Province is analogous to the situation in the border states of the Union. We may therefore in some cases compare the systems of tax legislation in vogue in these states with those adopted in Ontario.

Railroads.—In the case of railroads the general custom in the United States is to "assess only so much of the capital as is represented by the proportion which the mileage in the state bears to the total mileage."‡ In Ontario every railway pays a

*Professor Seligman says that there is only one book upon the subject, viz., Dietzel's "Die Besteuerung der Aktiengesellschaften in Verbindung mit der Gemeinde-Besteuerung, 1859," and that this book is out of date. E. R. A. Seligman, "Essays in Taxation." New York, 1895.

†The best treatment of the subject is without doubt Professor Seligman's own in the volume quoted. It is treated incidentally by several writers upon taxation. A bibliography up till 1895 is given by Professor Seligman in his "Essays on Taxation." There is much useful information in R. T. Ely's "Taxation in American States and Cities" quoted above.

‡Seligman op. cit. p. 226.

tax of $5 per mile, the measurement not including switches, etc. nor double measurement in case of double track. Electric railways are exempt. The principle of charging an arbitrary mileage rate has the merits of simplicity and constancy, but it has the disadvantage of inflexibility because it does not afford any increasing return automatically, and if the rate were increased it might at once become quite unfair. Development lines run into scantily populated places would be overtaxed, while main lines of traffic would be undertaxed proportionately. The arbitrary amount as at present imposed is small, but if it were desired to derive an increased revenue from railways it would be necessary to adopt some other principle, preferably perhaps the principle of gross receipts—a better basis than net receipts for the practical reason that it is hard to prevent additions to capital account being made out of annual revenue. The exemption of electric railways is probably only temporary. As these increase their mileage and come more and more into competition with steam railways discrimination in their favour will become impossible.* No doubt the extraction of the gross receipts arising from the traffic within the Province might be a matter of some difficulty in the case of interprovincial railways, but the principle is probably the soundest of all.

Street Railways.—The mileage principle is adopted also in the case of street railways, but the rate is much higher, being $20 per mile for a track not exceeding twenty miles; $35 per mile when the track exceeds twenty miles, but does not exceed thirty miles; $45 per mile when the line exceeds thirty miles, but does not exceed fifty miles, and $60 per mile when the line exceeds fifty miles. Double track counts as two miles of single track. This principle is based obviously upon the principle generally adopted in granting franchises to street railways. It has the merit of simplicity and certainty, but it has the disadvantage of tending to check extension of lines unless

*Some of the considerations referred to below in connection with the expediency of placing the chartering or enfranchising power in the hands of the Dominion Parliament, and the taxing power in the hands of the Provincial Legislature apply to the case of those railways which work under these conditions.

they can be depended upon to pay the tax as well as the rent. The tax as it stands at present is a tax of almost ten per cent. of the rent per mile. It is possible that a percentage of the gross receipts in this case usually readily obtainable would be at once more equitable and elastic, and would moreover be less likely to prevent extension of the lines as need arose.

TELEGRAPH COMPANIES.—The owners of a telegraph line within the Province and the company which operates the line are each jointly and severally liable for one-tenth of one per cent. upon their paid-up capital. So that the telegraph line as a whole pays a tax of one-fifth of one per cent. upon their paid-up capital. Thus a company paying a dividend of five per cent. upon its paid-up capital would pay one twenty-fifth of that or four cents on each dollar.

EXPRESS COMPANIES.—Express companies pay a tax of $800 for the first four hundred miles over which they operate, and an additional $125 for every additional four hundred miles or fraction. This is practically a license duty. The expedient of estimating the amount of the tax by mileage is a rough and ready one, intended apparently to indicate in a general way whether the company is in a large way of business or not.

SLEEPING AND PARLOUR CAR COMPANIES.—Sleeping car companies pay a tax of one-third of one per cent. upon the capital invested in rolling stock used in Ontario during the preceding year.

TELEPHONE COMPANIES.—Telephone companies pay one-eighth upon the paid-up capital of the company.

GAS AND ELECTRIC LIGHTING COMPANIES.—Gas and electric lighting companies pay one-tenth of one per cent. on their paid-up capital. Municipal works are excluded. Companies exploiting natural gas pay a license fee as above described.

TRUST COMPANIES.—Trust companies* pay $250 where the capital is $100,000 or less, and $65 on every additional $100,000; and where the gross profits are $25,000 per annum or over an additional sum of $500 per annum, but the interest upon paid-up capital is not reckoned.

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*Property company acting as trustee.

Loan Companies.—Loan companies having fixed capital pay $65 for each $100,000 or fraction. Loan companies having withdrawable capital pay a similar amount. In the case of loan companies having their head office in Great Britain, the Lieutenant-Governor-in-Council may cause the tax to be calculated upon the funds of the company employed in Canada.

Insurance Companies.—Life insurance companies which transact business in Ontario pay a tax of one per cent. and other insurance companies pay a tax of two-thirds of one per cent. calculated on the gross premiums received in respect of business transacted in the Province. Insurance companies which already pay under the provisions of the Ontario Insurance Act (sec. 181) are entitled to deduct the amount of this tax from the amount payable under the new Act.

In the case of an insurance company, foreign to the Province, there is a proviso which has already been noticed.

Banks.—The clauses of the Act which deal with banks are as follows:—

Sec. 2. 1. (a). "Every bank shall pay a tax of one-tenth of one per cent. on the paid-up capital stock thereof when such paid-up capital stock thereof is $2,000,000 or less, and $25 for every $100,000 or fraction thereof of the paid-up capital stock in excess of the sum of $2,000,000, and not exceeding $6,000,000. (b). Every bank shall pay an additional tax of $100 for each principal office or place of business in the Province, and $25 for each additional office, branch or agency in the Province, but no such tax shall be levied upon more than one office, branch or agency in any one city, town or village."

5. It shall be lawful for the Lieutenant-Governor-in-Council when the head office or principal place of business of any bank is in any Province of the Dominion, other than Ontario, and it employs within this Province only a part of its paid-up capital, and has not more than five agencies or branch offices within the Province, to reduce the amount of the capital or other moneys of such bank at any time in use in this Province; but the tax exacted shall not in any case be less than one-tenth of one per cent. upon one-half of the paid-up capital of such bank.

6. Banks, street or electric railway companies in cities, telegraph companies, telephone companies, gas and electric lighting companies, natural gas companies, companies transmitting natural gas, express companies, and sleeping or parlour car

companies which pay the taxes by this Act imposed thereon, shall continue to be assessable and taxable for municipal purposes as heretofore.

Insurance companies and trust and loan companies are relieved from municipal assessment in respect to their income. Railways are not liable to municipal assessment in respect to their tracks and roadways along any street or highway.

The first point to be noticed in connection with special Provincial taxation of banks, is that while in the present state of the law it is undoubtedly within the power of the Province to impose a tax upon the banks, it is also the case since they owe their charter not to the Province but to the Dominion there is strong ground for the suggestion that taxation should be imposed by the legislative body that is the source of the charter. This question has been much contested in the United States. With regard to banks and to other corporations the practice has greatly varied. It is obvious that the taxation of personalty is inevitably a difficult problem; should it be taxed where it is situated or employed or should it be taxed in the place at which the owner is domiciled? In the case of a bank whose capital is necessarily merged in its general assets, these general assets are in the nature of the case highly mobile, not merely as regards states in the same country, but as regards different countries. It is therefore very difficult indeed to avoid several taxations on the same property if the taxation is based upon the gross amount of it. It is perhaps too much to say as Professor Seligman does* "that the obvious result, of course, is double taxation of a nature which cannot possibly be justified." Double taxation of this kind may be very inexpedient, but it may be justified, as it is by Professor Westlake for example† who points out that the double taxation paid by the same man or set of men in two separate states would never equal the taxation which a double set of men would pay if one set resided in one country with the total means of the absentee owner and the other in the other country with the means there possessed by that owner." Whether, however,

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*Seligman, "Essays in Taxation" p. 224.

†Prof. Westlake, "The Theory of Taxation with Reference to Nationality, Residence and Property." The *Economic Journal*, London, vol. 9, 372.

this applies to the case of banks is an open question, and at least in this case, is really perhaps not "insoluble and irrelevant," an expression which Professor Westlake apparently applies to the case of absentee ownership pure and simple. It is quite true that the capital of a bank and the total assets of it are important factors in its business at each individual branch, since people trust it or do not trust it according to its general standing and according, let us say, to the amount of its capital, but it would be straining this point to suggest that therefore its total capital was employed at each individual branch and was therefore liable to be taxed no matter where this branch might be situated. If there is anything in this argument at all it would mean, for example, that a bank might be taxed upon its capital as at the head office, not merely in Ontario, Manitoba and British Columbia, but it might also be taxed upon the whole of its capital in each individual branch in these different Provinces. It might be fair no doubt to tax a bank upon the amount of its capital which was employed during any particular period within the Province, on the principle that it was fair that a bank doing business in the Province should, to the extent of that business, contribute to the expense of the Government establishment. It might even be regarded as arguable that a bank having its domicile in Ontario should be taxed upon the whole of its capital there and should again be taxed upon that portion of its capital which it employed in Manitoba, for example, on the ground that so far as it was in the power of the bank to do so its action in establishing a branch in Manitoba necessitated the duplication of Governmental function,* and therefore rendered it liable to submit to double taxation in respect at any rate to that portion of its capital which was employed in the institution; but it is difficult to see any question of fairness which could justify as the present law undoubtedly does justify each separate Province, imposing a tax upon the whole of the capital of a bank whether its head office was in the Province or not. That is to say, suppose the capital of a bank were five millions of dollars and the head office were in the Province of Quebec, if it did business in all the Provinces it

*As in the case considered by Professor Westlake, *e.g.*

would have to pay as if its capital were seven times that amount. The fact that the tax is small in amount does not affect the principle; a small tax of that kind may be increased gradually under the pressure of political exigency and one of the results inevitably would be that the banks would, as the railroads have already done, throw themselves into Provincial politics in mere self-protection. It would appear as though the natural outcome of this situation were that the tax should be a uniform tax over the whole Dominion, settled by the central authority and the revenue, if necessary, distributed *pro rata* among the Provinces. Even if the same amount were collected under one system as under the other the basis of collection would be more obviously fair, the tax would be less expensive to collect since it would be made in one payment instead of in several payments, and the total amount of it would be seen at once. There could then arise no question of double taxation and no difficulty as to the discrimination of the amount of the capital employed in one Province or another.

Apart from the question of the expediency of Provincial taxation of banks is the question of direct taxation of banks by any authority. Prior to the establishment of the present system of banking in Canada a tax of one per cent. was imposed on the note issue, but when the new banking law came into operation in 1870 this was done away with, and although there was, of course, no pledge that taxation should not be imposed, it is only fair to notice that in submitting to the new banking regulations the banks had to give up a part of their note issue. There is therefore some justfication in regarding the dropping of the direct tax as part of the bargain by means of which the new banking system was inaugurated. I am not aware, however, that this point has been pressed on the part of the banks.

If the principle of special taxation be admitted the question is, upon what will that special taxation be based? Should it be based upon the property of the bank or upon the earnings of it? In any case it comes out of the earnings if there are any for it to come out of; if not, then it must come out of the resources of the bank. If it is based upon the capital the tax has of course the advantage of certainty, but it has the disadvantage of inflexi-

bility. The bank must pay the tax whatever it is, not in proportion to its power to pay, but solely in proportion to its property.

The experience in the United States is as follows: direct taxation of banks really began there in 1813 by a duty on notes or alternatively by a tax upon dividends imposed by the Federal Government. The State of Georgia had, however, imposed a tax in 1805 of 2½ per cent. on the capital of the banks, and one-half of one per cent. on their circulation. Massachusetts imposed in 1812 a tax of one-half of one per cent. on the amount of the capital stock. Pennsylvania in 1814 adopted an entirely different principle. Banks were taxed at the rate of six per cent. upon their dividends, in the case of banks liable to pay the Federal Tax, and eight per cent. in the case of those banks not so liable. In 1824 the rate became eight per cent., and then afterwards the principle of gradual taxation was introduced by which the rate varied according to the rate of dividend. Ohio and Virginia also at this time taxed banks on their dividends, and Vermont explicitly provided in its bank charters the reservation of a portion of the dividends. In Ohio in 1816 the general banking law determined the amount of taxation. After a number of changes in 1850 the taxation of dividends was abolished, and banks came to be taxed on the amount of their capital stock and contingent fund. In Virginia the tax on dividends began in 1846 with a rate of 1¼ per cent. During the civil war this rate reached 17 per cent. on dividends. The Massachusetts tax of 1812 was in addition to that levied on the individual stock-holder, but it applied only to charter and not to free banks. In Louisiana in 1813 the "stock in trade" of all banks was charged. In Connecticut in 1830 a special tax was levied on all absentee owners of bank stock. Special provision was devised by North Carolina, where the taxation of capital stock varied with the rate of dividend. Since the National Banking System came into force many changes have been made. In 1862 the National Government exempted from State taxation all stocks and bonds of the United States. The question whether this applied only to those stocks issued after the date of the Federal Act was decided by the Supreme Court of the United States against State taxation of

such stock. The State Legislature of New York then imposed a tax upon banks on the valuation equal to the amount of their capital stock which as regards the National Banks of course included the stock of the United States. The State Court of Appeals sustained this law on the ground that the tax was on capital stock and not on property, but the Supreme Court of the United States reversed this decision. In 1864 the National Bank Act permitted the taxation of individuals in respect to their National Bank shares, and the New York Legislature in 1865 enacted that shares in National Banks should be included in the valuation of the personal property of individuals. The Supreme Court of the United States sustained the principle on the ground that a tax on shares in the hands of individuals was not a tax on the capital of the bank, but since the capital of State banks invested in National securities was exempt a tax on their capital was not a tax on the shareholders, and therefore to tax the shareholders of the National Banks on the whole of their stock was a discrimination against the National Banks. The New York Legislature then in 1866 provided for the taxation of shareholders both in State and National Banks by taxing them on the value of the shares, deducting the capital invested in real estate. The banks were no longer taxed on their capital, but had to deduct the tax from the dividends or retain the dividends until the tax was paid. The Supreme Court sustained this. In the question arising as to whether the shareholder could deduct from the assessed value of his shares the value of his debts as he could in case of taxation of other personal property the Supreme Court decided, after 13 years had elapsed since the decision of the State Court of Appeals in the negative, "that the prohibition against the taxation of National Bank shares at a greater rate than that of other moneyed capital could not be rated by the assessment of equal rates of taxation upon unequal valuations." From 1880 it would appear that owing to a decision of the Supreme Court the words "moneyed capital" "are practically confined to banks and the imposition of a lower rate of taxation on other corporations does not invalidate the bank tax." The bulk of the taxation on personal property in some towns is paid by the bank shareholders because "They alone are unable to evade the otherwise so laxly

executed tax on personalty." The tax system in the other States of the Union is similar to that which has been developed in this way in the State of New York.

I have taken the liberty of summarizing in the above notes the account of the experience of the United States given by Prof. Seligman in his interesting essay on the taxation of corporations already quoted.* Prof. Seligman sums up the matter as "The separate taxation of real estate plus the taxation of the shares in the hands of individuals whose tax is generally paid to the bank and then withheld from the dividends." Some states do not tax non-residents' stock, others do but at a rate different from that imposed upon residents. In Connecticut the banks pay one per cent. on the market value of non-resident stock. A few states still continue the tax on capital stock. Pennsylvania imposes an alternative tax of eight mills on the par value of their capital stock or alternatively four mills on the market value. In addition to that they are liable for the State Tax on money at interest. In Georgia banks are taxed on their property exclusive of the market value of the shares. The shares are then taxed in the hands of the shareholders, and the bank is taxed upon its surplus and undivided property. In North Carolina and Florida there is in addition to a tax on bank shares—a license tax fixed according to the capital of the business transacted. In New York State there is a special law taxing foreign banks at the rate of one-half of one per cent. on their deposits or moneys used in their business.†

All these varied experiments on the part of the American Commonwealths are the result of empirical treatment of a subject of much intricacy. The forces which are set in motion by taxation of this kind are so difficult to determine beforehand that it is not surprising that unexpected results should follow empirical methods. Apart from this, taxation of banks, like the taxation of everything else, presents a series of practical problems and it is not always the tax that is most sound from a scientific point of view which is m likely to commend itself to the minds of statesmen. An interesting instance of this is to be

*Essays on Taxation, pp. 143 to 148.
†*Ib.* p. 149.

found in the recent changes in direct taxation in Austria, where the new Tax Law has been introduced by the Minister of Finance, Herr Ernst von Plener, who had written on economical questions and had moreover the assistance and great authority of two really scientific experts, Dr. Bohm-Bawerk and Dr. Meyer, the latter two being the principal draughtsmen of the bill. Yet the system as evolved under these favorable circumstances, although against, it is true, an "unruly opposition," is as complicated and inconsistent as if it had been drawn in a wholly empirical way. It is interesting to notice that in this very system the corporation tax occupies an important place. It is in the main a tax upon property, although the net profits are calculated in a different way from the net commercial profits as usually regarded. It is a graduated tax based upon the profits. The interest of preference and debenture stock is included in the tax. In this scheme also mortgages are taxed.*

In all these movements one sees no doubt a current of popular feeling in favour of the taxation of capital. This feeling is of a very much more extensive, serious and practical kind than the furore for the taxation of land values, which seems to a large extent to have spent itself. It would be out of place in a brief sketch of this kind to discuss at any length the theory of taxation, and yet in order to apply any test to these empirical efforts of legislators one must relate these efforts to the current theory of taxation. If, with most of the recent writers upon the subject, we dismiss the theory that taxation should be imposed according to benefit or protection accorded, then probably we are shut up as Prof. Edgeworth suggests to the principle of utilitarianism, the principle that is, which "proposes as the end of action the sum total of happiness"—that is, that the total utility of taxation should be as great as possible, or the total pleasure yielded by it as great as possible and the total pain of disutility as little as possible. If we look at it in this way it follows, as Professor Edgeworth points out, that the disutility or pain which ought to rest upon the taxpayers ought to be equal, that is, it ought to cost as much annoyance and distress to put

*Cf. R. Sieghart, "The Reform of Direct Taxation in Austria." The *Economic Journal*, London, vol. viii., p. 173.

it in that way, to an artisan earning $5 a week to pay his taxes as it does to Mr. Rockefeller with, say, $50,000 a week. As a matter of fact there can be no doubt that this is precisely the way the artisan looks upon it, and if his rendering of the theory were taken by itself he would not be satisfied until Mr. Rockefeller's income were reduced by taxation to precisely the same amount as the artisan's net wages. As Prof. Edgeworth hints, there is here undoubtedly a gleam of the extremest socialism, but if we ask whether the "sum-total of happiness" would be increased by an arrangement of that kind the gleam is at once clouded over by "doubts and reservations." In starting for an ideal distribution we may have landed ourselves in a range of production which is anything but ideal; which may be, in fact, so greatly reduced as to diminish the sum total of happiness. As thus briefly stated we may apply the principle to the taxation of corporations. If the associative principle makes, as it appears to make, for increased economy of effort and so for increased production, we must see that we do not unduly hamper its action by exposing it to embargoes which would minimize its powers of effecting this economy of effort.*

As regards the practical aspect of taxation the impulses towards increased taxation of joint-stock companies are no doubt derived from the hold which these great aggregations of capital have upon the public, especially in Democratic States, but it is open to question whether taxing them heavily and so provoking to fuller and fuller exercise of their monopoly, where they have one, in order to sustain the amount of their net income is the best way to control them. Since they are all in one way or another the creatures of special laws it may be that there are other ways in which they may be prevented from preying upon the public. Some of these ways which are customarily adopted—taxation of prices for example—are no doubt readily evaded, but by rendering companies open to inspection and by full publicity of their accounts fresh ways may possibly be devised. In any case taxation for taxation's sake seems a very doubtful principle unless we could be quite sure that the

*On this question see the very ingenious argument of Prof. Edgeworth in "The Pure Theory of Taxation." The *Economic Journal*, London, vol. vii. p. 550.

redistribution of wealth involved in this is going to be quite equitable. The experience of the United States does not show this. It shows indeed that the enormous revenues derived from these very corporations have, so far as appears on the surface at any rate, contributed importantly to the increase of their power, and have at the same time placed a formidable weapon in the hands of the governing classes. If equality of distribution is the ideal it can hardly be said to be sustained in the United States by these means. It must always be remembered that in taxing corporations we are after all taxing individuals and that in the last resort the justification of a company tax is the same as the justification of a directly individual one.

The general objections which may be made against the system of special taxation adopted by Ontario are that it is based upon no definite principle, that it is too complex and that in nearly every case there is no automatic process by means of which an increased yield may be obtained. It may also be objected that no account of earning power is taken—no account that is of ability on the part of the taxpayer to pay.

On the other hand it may be argued that the taxes in most cases are small, that the total yield of the taxes may readily be estimated, that they are easily collected, that they involve the taxation of some income at its sources and that these sources are more or less monopolistic in their nature and are therefore fit subjects for special taxation.

The confusion of Dominion, Provincial and municipal taxation, and the certainty of double taxation under the existing system, suggests a comprehensive inquiry into the whole subject with a view to the remodelling of it.

JAMES MAVOR

UNIVERSITY OF TORONTO, May, 1900

THE LATE MR. WOLFERSTAN THOMAS

WHEN in the year 1870, Mr. Wolferstan Thomas was recommended to the directors of the Molsons Bank for the office of cashier, the bank was a very small affair, and had not grown much since its organization. Its business was wholly confined to Montreal, and during the fifteen years of its existence it had never attempted to enlarge its borders. It had, in fact, been rather dragging on than prospering for several years back, and it was sustained rather by the credit and prestige of the Molson family than in its own inherent strength.

Although it had a paid-up capital of a million dollars its business was so small as to be out of all proportion to the extent of its capital; its deposits being only $920,000, its circulation $302,000 and its discounts $1,100,000. These figures will at once demonstrate the difficulty experienced by the directors of the bank in making sufficient profit, and the necessity of taking other measures in order to utilize what was considered in those days the considerable capital of a million dollars.

Under these circumstances a consultation was had with Mr. King, the General Manager of the Bank of Montreal, with a view to his recommending some man of energy and capacity who would be likely to build up the institution. He nominated the manager of the London branch of the bank, Mr. Wolferstan Thomas, then a young man of 35, and only known in one or two Western towns where he had served the Bank of Montreal, and to the bank authorities themselves.

Mr. Thomas' career up to this time had, however, been quite a noticeable one. The son of the Rector of a parish of the Church of England in the old county of Cornwall, he was educated at the Sherbourne Grammar School in Dorsetshire,

one of those fine old public schools that are peculiar to England, and where, if boys do not learn anything else they surely learn to be gentlemen. But in this school they did learn something else; for the drilling in classics and mathematics was efficient, not to say severe. When young Thomas left the school it was a question whether he should enter the church or the army; and there can be little doubt that if he had entered either of these he would have made his mark quite as decidedly as he has in the sphere of banking. In all human probability he would have become either a Bishop or a General, for he was a man of the kind that is "born to rule," and his force of character would have asserted itself in either of those spheres just as it did in the sphere of banking. Of banking, however, in those early days neither he nor his friends ever dreamed. In those days it was far more common for young fellows of good education and gentlemanly manners to seek their fortunes in this part of the world than it is now, and there were many parts of Canada in which numbers of them might be found. These were generally the beautiful and picturesque regions of the country where fishing and shooting could be had; in fact, the fishing and shooting were very generally much more "in evidence" as an attraction than the hum-drum work of settlement and farming. It was to one of these spots that young Thomas betook himself, viz., the neighbourhood of Rice Lake, a lovely sheet of water situated about half way between the towns of Cobourg and Peterboro in Ontario. There he spent some time with a view to learn farming, but like many other young men of the same class, he soon found the drudgery of it perfectly intolerable.

His connections then secured him an introduction to the cashier of the Bank of Upper Canada, and he was given a post as Junior in the head office in Toronto. His salary here was so small and his means so straitened, that, as he told me himself, he was sometimes afraid to walk along King st. for fear of meeting his tailor, or others to whom he was indebted. But his foot was upon the ladder, and though it was on the very lowest round it was a place from which he could climb upward. That he did climb upward to some purpose is proven to all the banking and mercantile world of Canada. The first step up was

when he left the Bank of Upper Canada and secured a position in the Bank of Montreal. There his qualities quickly displayed themselves, and in due time attracted the notice of Mr. King. He was first given charge of a branch in one of the smaller towns of Ontario, and after a time was transferred to London.

The policy of the bank at that time was rather to restrict business in Ontario, and in many of its western branches a very small discounting business was done. More than one of the many capable men in the bank's service somewhat fretted at the style of business committed to them at their branches, for no man of ambition to rise in his profession could be content with merely receiving deposits, making collections and selling drafts, which was all that was expected of many managers. It is very possible that Mr. Thomas was one of those that fretted at the restrictions placed upon his energies, and that Mr. King had this in view when he recommended him to the notice of the directors of the Molsons Bank. There he would undoubtedly have ample scope and could make of the Bank whatever it was capable of, considering the time and circumstances. But when the position was offered to Mr. Thomas he accepted it with a good deal of doubt and hesitation. So much was this the case that he did not bring his family to Montreal for more than twelve months after his appointment.

The condition of banking in Canada at that time, however, was rather favourable to the operations of any bank that desired to extend its operations in Ontario. The great controversy respecting bank circulation had been settled on a basis that made it possible to make profit out of branches. Had this not been done it would have been impossible for either the Molsons or any other bank to extend its business to the towns and smaller centres of business in Ontario. In fact many of the branches already existing would probably have been closed. But with the extension of the power to issue circulation came the power to give accommodation to the large number of persons engaged in moving the crops to market, and also to men in the lumber trade, and the various industries dependent upon both. No one knew this better than Mr. Thomas, for his whole experience had been in Ontario. And Mr. King was very willing to let him enter this field, for it was one from which he had

himself deliberately withdrawn. He had a theory, which he carried out with characteristic courage, viz., that the smaller banks should do the business of making advances to the men who gathered the crops together, and that the time for a bank like the Bank of Montreal to intervene was when the crops required to be exported. This left a large field open to Mr. Thomas' energies and he proceeded to occupy it as soon as he felt the ground to be firm under his feet.

The directors of the bank were quite willing to fall in with the new departure, and indeed during the whole of Mr. Thomas' career he had the co-operation in this capacity of some of the ablest men in the community. The names of various members of the Molson family, as well as of Mr. Thomas Workman and Sir David Macpherson will at once occur in this connection.

London was the first branch opened by the bank, the business of that rising city being, of course, perfectly familiar to Mr. Thomas. This was an immense advantage, as all will understand who know of the pitfalls that beset the explorer of new banking fields. This was in 1871. From London he proceeded in the work of opening branches in various directions in Ontario, Owen Sound being the next in order, then St. Thomas (this town, as it then was, being near to London, and the ground, of course, familiar), then Toronto, Morrisburg, Brockville, Meaford, Smith's Falls, Exeter and Windsor. All these places are the centres of good agricultural districts, and all enabled the leading idea of the expansive policy to be carried out, viz., the giving facilities to the primary dealers in the staple crops of the country. For Toronto itself, largely a wholesale centre as it had even then become, was also a large farmers' market, and the same business of primary dealing was carried on in it as has been referred to respecting other places.

Another branch was opened at Sorel, in the province of Quebec, but in this case the influence of the Molson family, always potent in that province, can be clearly traced.

These branches had all been opened between 1870 and 1874. After this there was a considerable pause and nothing was done in the way of extension for four years. This abstinence was wise, for from 1874 onwards a period of difficult times supervened in Canada, which lasted for six years. During these

years it is well known that all the banks made heavy losses, and the Molsons Bank suffered heavily with the rest. I well remember once meeting Mr. Thomas on the train in 1877, when we were both going to a western town where the Molsons Bank and the Merchants had been heavy sufferers. Very naturally, we talked about the troublous times we were passing through. Mr. Thomas was in very low spirits, and pointed out the difference between my position and his. He was responsible for the losses that the bank was suffering, as many of them were the direct consequence of his policy of expansion, while I, though having losses of immensely greater magnitude to deal with, had no responsibility for them whatever. Hence it was that the Molsons Bank absolutely paused in its career of expansion for four years. But it was resumed in 1878, in a spirit of hopefulness which was possessed by some other bankers at the time, but which events unfortunately failed to justify. Mr. Thomas doubtless saw this in time, for only three additional branches were opened in the years between 1878 and 1881. By that time a remarkable change for the better had taken place, and the policy of opening new branches was steadily pursued year after year, and characterized Mr. Thomas' management till his death. The boldness and energy of his character in this respect has been specially manifest of late years, but between the year 1897, when a branch was opened in the city of Quebec, to 1899, no less than fourteen additional offices were opened. The field covered by these embraced almost every part of the Dominion from Quebec to British Columbia, and comprised three in the latter province, six in Ontario, and four in Quebec.

It was doubtless in view of some such responsibilities in the future that Mr. Thomas prevailed upon the board, within about a year of his taking charge, to increase the capital of the bank from $1,000,000 to $1,500,000. This measure, when carried out, increased the circulating power of the bank by $500,000 and thus furthered the policy of expansion. The same idea can be traced in a further increase from $1,500,000 to $2,000,000 in the following year, and in the authorization obtained subsequently of an increase to $2,500,000.

Apart from such increases of capital and circulating power it would have been impossible to carry the policy of establishing

branches as far as it was carried. Time only can show whether it is profitable to extend the opening of branches of chartered banks into such small centres as have recently been exploited. One thing is certain that whether small branches can make profit or not they will undoubtedly give opportunity for making *losses*, and also that every additional branch, no matter how small, gives additional work of supervision to a general manager and his staff.

Mr. Thomas, however, seemed at that time capable of undertaking almost any amount of additional work. Yet it can scarcely be doubted that the enormous expansion of the bank under his management prevented his taking that rest and recreation which are indispensable to a man in his position, and had something to do with the break-down of his health at the last.

Mr. Thomas took a prominent part in the establishment and working of the Bankers' Association; indeed it may be said to have grown out of a suggestion of his at the time of the renewal of the bank charters in 1880. I well remember that on returning from Ottawa, after long conferences with the Finance Minister and with one another, it was suggested by Mr. Thomas that as such casual conferences between us had proved so beneficial to our interest, it might be well to inaugurate a machinery by which such conferences could take place regularly. The remark proved to be one of those which are a seed of future action. The idea was not allowed to sleep. Though nothing was done to give it practical effect for some time, it was taken up seriously at length. The difficult work of framing a constitution was finally completed, and the Association started on a career which has proved to be one of usefulness, and which has now been entrusted by Parliament with most important functions in connection with bank circulation. Mr. Thomas was president of the Association a few years ago, and his address at the annual meeting (held at Niagara Falls in 1897) was distinguished by a breadth, lucidity and philosophic insight which rendered it worthy of a high place amongst banking addresses. The influence of the Association on this occasion was strikingly shown in the attention that was paid by the Chancellor of the

Exchequer in England to our remonstrance against the introduction of silver as a part of the basis on which the circulation of the Bank of England should rest.

While Mr. Thomas' principal energies were given to banking he was a broad-minded citizen of Montreal, and took a very active part some years ago in a movement for placing its financial affairs on a better basis. An era of municipal extravagance had doubled the debt of the city in five years. It was felt to be absolutely necessary to put a check on such possibilities for the future, and an association for promoting the good government of the city was formed in which Mr. Thomas took a very prominent part. By its exertions a provincial law was at length passed which has had a most beneficial influence on the financial affairs of Montreal.

But this was not all. It has been very wisely said that every man in addition to his own professional occupation would find it well to have a *hobby* ; some other pursuit to which he can turn as a recreation. This idea was adopted by Mr. Thomas and to his honor be it said that his hobby was *benevolence.* To relieve suffering in its varied forms was almost the passion of his life. Without taking one iota of time from his responsible banking duties, he so measured out the hours of the day as to devote time to the work of the General Hospital of the city, the Hospital for the Insane, the Deaf and Dumb institution, Church of England Home for Aged Poor, the Church Immigration Home, and the Society for Prevention of Cruelty to Animals. Of the two first he was president for many years, and by his exertions and influence an immense amount of money was raised for carrying them on. But for him it is almost certain that the Insane Hospital would not have been in existence, so formidable were the difficulties attending its inauguration ; while as to the latter, the entire renovation and enlargement which took place some years ago and the addition of the admirable Nurses' Home attached to it were largely the result of his persistent exertions.

Mr. Thomas possessed the faculty in an eminent degree of concentrating the whole strength of his mind upon whatever he was engaged in at the moment, and of this fine faculty both the

Molsons Bank and the Bankers' Association, and the benevolent institutions just named had the full benefit.

In one respect it might seem as if Mr. Thomas had been cut off in a somewhat untimely manner. But when we consider all the work he has done, of which only the merest suggestion is given in this paper, it must be concluded that his was a fully rounded life, spent in the service of his day and generation, in such a manner that not only the stockholders of the Molsons Bank, but numbers of the sick, the poor, and the blind of Montreal will have reason always to revere his memory.

George Hague

Montreal, June 29

CURRENCY LEGISLATION IN THE UNITED STATES

EARLY in the session of the present Congress, measures for the reform of the Currency Laws were introduced in the House of Representatives and in the Senate. The House Bill, which was the result of the Indianapolis Conventions of 1897 and 1898, was passed by the Lower Chamber in December, and the Bill in the Senate, which had been prepared at a Republican caucus held in the early part of 1899, came up for discussion in January. In February, a Conference composed of members of both Houses met for deliberation, and finally reached an agreement by incorporating many of the special features of the two measures in the present Gold Standard Bill, which became law on the 14th March. For political reasons a rider had to accompany the new law stipulating that international bi-metallism was not to be precluded when made expedient and practicable by the concurrent action of the leading nations of the world.

The parity between gold and silver ever since the resumption of specie payments in January, 1879, has been maintained, but the task, at times, was a difficult one and involved considerable expense. The law upon the subject was not clear, and it moreover left much to the discretion of the Secretary of the Treasury; and while it has been the constant policy of the present administration to meet all its obligations in gold and to demonstrate that gold was in reality the standard of value, it was still possible for the Government to elect to pay its obligations in silver, seeing that the silver as well as the gold dollar was unlimited legal tender. The present action of firmly fixing on the statute book what has, in recent years, been carried out in practice, is very commendable and should receive the approval of all believers in "sound money," whatever may be their views as to the ultimate benefit of the reform measure. Of

course, merely putting the country, however securely, upon a gold basis does not remedy the defects inherent in any rigid currency system, nor do the amendments to the National Banking Law, which will be mentioned later, give elasticity or even convertibility—terms familiar to everyone conversant with the Canadian system—to the bank note circulation.

STANDARD OF VALUE

The Bill then is essentially "an Act to define and fix the "standard of value, to maintain the parity of all forms of money "issued or coined by the United States . . . ." It affirms that the standard unit of value shall be the dollar consisting of twenty-five and eight-tenths grains of gold, nine-tenths fine, and that it is the duty of the Secretary of the Treasury to maintain at all times the parity of all forms of money.

As has been pointed out by several writers, this is the first instance in the currency history of the United States that any particular kind of dollar had been defined as the standard of value, and the emphatic declaration, in section II of the Bill, that all United States notes and Treasury notes issued under the Sherman Act (July, 1890) are henceforth payable in gold, indicates the progress that has been made, since the wide-spread silver agitation of four years ago, in the education of the people on the Currency question.

GOLD RESERVES

For the purpose of maintaining this gold standard, $150,000,000 is to be taken from the general fund of the Treasury and to be set apart for redemption purposes only. This sum is to be the maximum amount of the fund, which may include the redeemed notes. To replenish the fund with gold, the Secretary is authorized to exchange for gold the notes that have been redeemed in the general fund of the Treasury; or he may pay them out at the Treasury or at any sub-treasury for deposits of gold, or finally, he may use them for the purchase of gold bullion as at present; in other words, the notes that have been redeemed by the gold out of the redemption fund must be held undisturbed

in the Treasury until re-issued for the same coin as that for which they were exchanged. In this way the "endless chain," caused by the greenbacks being redeemed at the Treasury for gold, and then being immediately thrust into circulation and again becoming a charge upon the redemption fund, will be broken.

But if by these means the gold in this fund should fall below $100,000,000 the Secretary of the Treasury shall issue and sell for gold, bonds of the United States bearing interest at a rate not exceeding three per cent. per annum, such bonds being redeemable at the pleasure of the Government after one year from issue. The gold received will be first held in the general fund of the Treasury and then exchanged for the notes in the redemption fund in the manner above described, thus restoring the fund to the maximum amount, viz., $150,000,000. In this way it is confidently expected that the redemption reserve can always be kept replete with gold.

The notes exchanged and held in the general fund can be used "for any lawful purpose the public interest may require, "except that they shall not be used to meet *deficiencies* in the "current revenues."

Under the former Currency regulations the Treasury Department was tolerably successful in maintaining a reserve fund for redemption purposes of $100,000,000, but at critical times, it will be remembered, there was always a certain amount of uneasiness owing to the Government's option of meeting its obligations in gold or in silver. Now that the Government is pledged to maintain the gold standard, the tendency to withdraw gold from the Treasury on such occasions should be greatly reduced, and the task of the Secretary should therefore be much easier. Furthermore, the gross holdings of gold coin and bullion in the Treasury during the last fiscal year have been very large, amounting on the 30th September to over $350,000,000, while the receipts of gold at New York, in 1899, were 74.5 per cent. on the total sum. Not only this, but in the past three years the imports of gold exceeded the exports by over $180,000,000, and so long as the balance of trade continues in favour of the United States the withdrawing of gold for shipment abroad is greatly minimized. The revenues of the Govern-

ment also bid fair to continue to be more than sufficient to meet the ordinary expenditure, but should there be any deficiency in the future, the Bill provides a safeguard against any depletion of the fund on that account. Under these conditions one would naturally conclude that there would at all times be sufficient gold at the disposal of the Department to replenish the redemption fund and to keep it at least above the minimum amount of $100,000,000.

In brief, the Bill seems to fully provide the Secretary with the necessary means to make tolerably certain that henceforth gold will be the ultimate standard of value.

DIVISION OF ISSUE AND REDEMPTION

To facilitate the work of the Secretary the Bill provides for the separation of the banking from the fiscal Departments in the Treasury, and to this end, a division of Issue and Redemption is to be established, to which shall be transferred all accounts relating

(1) To reserve fund for the redemption of all United States and Treasury notes,

(2) To gold to be held against outstanding gold certificates,

(3) To United States notes held against Currency certificates,

(4) To silver dollars held against outstanding silver certificates.

Before the enactment of the present Bill, encroachments upon these various funds were possible, and with the fear that a deficiency in the revenues might result in a depletion of the reserve, an increased redemption of the Government's demand obligations naturally followed. But by the separation of the banking from fiscal departments the respective reserve funds can be used for no other purpose than that for which they are pledged.

SILVER AND GOLD CERTIFICATES

The new law also provides for a readjustment of the Treasury notes and silver certificates in such a manner as to prevent the demand obligations of the Government to pay silver

being the cause of an undue charge upon the redemption fund. As the large silver certificates are redeemed, they are to be cancelled and the equivalent issued in denominations of $10 and under, except that 10 per cent. of the total volume may, in the discretion of the Secretary of the Treasury, be issued in $20, $50 and $100 bills. At the same time a like volume of United States notes of denominations of less than $10 are to be cancelled and re-issued in denominations of $10 and upwards.

The Treasury notes issued under the Sherman Act for the payment of silver, are to ultimately retired, and as fast as the silver is coined into silver dollars, silver certificates are to be issued in place of the Treasury notes, which are then to be cancelled.

The result will be that the United States notes, which are a direct lien upon the redemption fund, will be converted into denominations of $10 and upwards, while the bulk of the silver certificates will be in the denominations of $1, $2, $5 and $10, the silver circulation being allotted the function of settling the small daily transactions of the people. This readjustment will also increase the volume of this "pocket" currency, which will then be more in keeping with the present trade requirements, and owing to the fact that this silver currency will be scattered and will be so essential to trade, no embarrassment to the Treasury is likely to arise from the presenting of any large quantity for interchange with gold. "By this provision," says Mr. Overstreet, "not only will the parity of the silver dollar be absolutely "assured, but a place honourable and creditable for the use of "the silver circulation will be effected."

The subsidiary coin in the country is also to be increased to $100,000,000, and the present worn and uncurrent fractional currency is to be recoined.

Formerly the Secretary of the Treasury was authorized to receive deposits of gold coin at any of the Treasury offices of the United States and to issue gold certificates therefor, but now this authority is to be suspended whenever and so long as the gold in the Redemption fund is below $100,000,000. The Secretary may also suspend the issuing of these certificates when the United States and Treasury notes in the general fund of the Treasury exceed $40,000,000. All gold coin received in

this manner shall be held for the payment of these certificates only, and accordingly they may be counted as part of the lawful reserves of the National banks and may be issued in denominations of $10,000, payable to order.

REFUNDING PLAN

The provisions of the Bill, which have been outlined so far, deal exclusively with the problems naturally involved in any reform of the Currency in the United States, but the remaining portion relates more to the National banking system.

The Refunding scheme of the Bill is to issue 2 per cent. 30-year gold bonds to refund the present debt, with the exception of the Fours of 1925—a total of $839,000,000. These new bonds are to be exchanged for an equal amount—face value—of the old bonds, the holders being compensated for the loss of interest by the payment of a bonus which will be computed " on the basis of their present value at 2¼ per cent." The Secretary of the Treasury states that if the whole of the old bonds are refunded the exchange will save the Government, after allowing for the bonus of nearly $30,000,000 to be paid the holders, some $23,000,000.

The policy of refunding the debt, in the light of the Government's large prospective surplus in income over expenditure, seems a questionable one. There are, of course, many contingencies which may greatly diminish the anticipated surpluses, and if it is really necessary to lighten the burdens of future generations, supposing that there is no possibility of reducing the debt from revenue account, the present plan, which enables the Government to float a two per cent. loan above par, has much in its favour.

The incorporation of this refunding scheme in the measure involved the altering of the existing National banking laws, for, as in 1863, it could only be by the aid of the National banks that this refunding process could be carried out on such a favourable basis. It therefore became necessary, first, to make it more profitable for banks to issue circulation, and second, to encourage the forming of new National banks.

When the National system was first inaugurated there was a fair profit on circulation, but with the increase in the price of Government securities, and with the natural reduction in the rate of interest paid, the profit has gradually decreased, and many banks now issue little or no circulation of their own. The Bill alters these conditions, in some degree, by allowing banks to issue notes to the par value of the bonds deposited instead of 90 per cent. as formerly, and by reducing the tax on circulation from one to one-half per cent. on the amount secured by the deposit of the new twos. The denominations of bank notes are by the Bill restricted to $10 and upwards, except as to one-third of a bank's total issue. This will reduce the expense of moving this kind of circulation and may slightly increase its convertibility.

To bring about an extension of the National system the law permits banks with a capital of $25,000 to be organized in places where the population does not exceed 3,000 inhabitants. The minimum heretofore was $50,000, and it is expected that this provision will enable the smaller towns to have proper banking facilities.

Since the 23rd of February, the date upon which the conferees of the House and Senate finally agreed to the new Currency law, many applications for National charters have been received by the Comptroller of the Currency. It is stated that the bulk of these come from the Western and Southern States, but it remains to be seen how many of them will be actually incorporated. No doubt a large number of the banks having bonds on deposit with the Comptroller will increase their circulation to the amount of the face value of the bonds, and many more may add to their holdings of bonds and increase their note issue under the new regulations. With the readjustment of the various kinds of currency there should certainly be a large field for the bank note, and with a fair profit in view, many look for considerable expansion.

Be this as it may the disadvantages in a bank note circulation secured by the deposit of bonds or of gold, still remain. The present system, at its best, may permit of expansion, and in that regard meet the expectations of its admirers, but with no adequate provision for contraction in the event of an inflated

currency, the system is lacking the esential feature of elasticity. The present legislation has doubtless given a new lease of life to the system, and the Baltimore plan or even that of the Monetary Commission has been shelved for some years to come.

W. GRAHAM BROWNE

NEW YORK, 20th March, 1900

GILBART LECTURES, 1900*

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

COLLECTION OF CROSSED CHEQUES BY BANKER FOR CUSTOMER—PROTECTION UNDER SECTION 82

IT is a particularly aggravating feature of the law that so much of it is subject to fluctuation and alteration. Short of a decision of the House of Lords, you can never feel sure that what is law to-day will be law to-morrow. A decision of a single Judge, which has long been treated as laying down the correct law on a certain point, may at any moment be overruled in another case by a Divisional Court or the Court of Appeal, and similarly the decision of a Divisional Court may be upset, not only in that particular case, but in another years after, with precisely similar facts, by the Court of Appeal, and a similar fate may befall a decision of the Court of Appeal at the hands of the House of Lords. Add to this that any common law or Equity Court is at perfect liberty to absolutely disregard any opinion, or, what we should ordinarily call, a judgment of the Judicial Committee of the Privy Council, and you get a state of affairs which tends to produce confusion, if not chaos. Especially does this last somewhat anomalous position of the Privy Council as a judicial body tend, one would say wantonly, to increase one's perplexities. I shall have to draw your attention to a recent decision of the Privy Council in a banking case, which, if we could solidly depend on it, would solve a difficulty of bankers we have discussed here perhaps more than any other. But can we rely on it? The Judicial Committee of the Privy Council is the ultimate Court of Appeal from India and all the dominions of Her Majesty the Queen Empress outside the British Isles; it deals with every variety of cause, commercial, civil,

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personal, criminal; it is practically composed of men of the same judicial standing as sit on the hearing of English, Scotch, and Irish appeals in the House of Lords. You find its decisions referred to in books like Chalmers' in support of propositions of law, and yet no Court in this country, not even, I believe, a County Court Judge, is bound by any decision of the Privy Council. The Courts have frequently so declared. In a recent case in the House of Lords, decisions of the Privy Council were quoted in which every member of the House as then constituted had taken part, but their Lordships, and no doubt in accordance with practice, declined to take the slightest notice of what they had said or assented to in their other capacity.

I believe this apparent anomaly is explained on the ground that the Judicial Committee of the Privy Council, though called judicial, is not really so. The Queen is the ultimate Court of Appeal from her colonial possessions. The Judicial Committee only sit to advise her what to do. They sit at the Privy Council Office, in the Privy Council Chamber; they do not wear wigs or gowns; there is a vacant place left at the head of the table which is supposed to be occupied by the Sovereign, if she were to condescend to be present; only one opinion is delivered, and it is not allowed to be known whether it is unanimous or that of the majority. It is not etiquette for counsel to take any note of that opinion, and the form of the opinion or judgment is that their Lordships will humbly advise Her Majesty so and so. Of course, that is all very nice and loyal and imposing, but when you find that law, so elaborately laid down, is not binding on any of the ordinary Courts, it certainly tends, to use the well-known phrase, "to make that darker which was dark enough without."

Then, again, when Judges, as they now frequently do, try cases without juries, exercising the functions both of Judge and jury, so that they have to find the questions of fact, they are somewhat apt to take a very broad view of what constitutes a question of fact, and to find as a fact something which is in reality a mixed question of fact and law. In this way they sometimes get round a decision of a Court of co-ordinate, or even superior jurisdiction, without going so far as to openly differ from it.

As we shall see, the Court of Appeal, if the case comes

before them, need not feel themselves much hampered by such a finding, but unless appealed against, decisions of that sort introduce a distinct element of confusion.

Now this fluctuation of legal authority, to call it by a polite name, has particularly affected the question of the collection of crossed cheques, and as that is one of the subjects most important to bankers, we must see what has been done, and where, at any rate for the present, we stand. It is not my fault if we appear to be going, to a certain extent, over old ground.

First, bring your minds to bear on sec. 82, the section affording protection to the collecting banker. It runs thus: "Where a banker in good faith, and without negligence, receives "payment for a customer of a cheque crossed generally or "specially to himself, and the customer has no title, or a defective title, thereto, the banker shall not incur any liabilty to the "true owner of the cheque by reason only of having received "such payment."

WHO IS A "CUSTOMER"?

Two conditions must concur in order to entitle the banker to protection under this section; he must receive payment for another person, and that person must be a customer. Let us take the latter question first. Who is a customer? I remember seeing that question on the bills of the *Financial News* the morning after that case of *Matthews v. Williams, Brown & Co.* was heard in 1894, and on looking at the article I found that the writer regarded that case as settling the point, as I certainly did myself. In that case, as you may remember, a man came into the bank with a crossed cheque, and asked them to collect it for him. He was a stranger to them, and had stolen the cheque and forged the endorsement. They communicated with the bank on which the cheque was drawn, found it would be paid, forthwith gave the man the money for it, less one shilling discount or commission, entered the transaction in a "sundry customers' account," and received the money from the paying bank. The Divisional Court (Cave and Wills, J.J.) held that the collecting bank were liable to the true owner of the cheque. Cave, J., said: "This was not the case of a customer of the "bank. The word customer involves use and habit. There

"was nothing of the kind here, and this man who presented the "cheque could not be described as a customer. One transac- "tion does not make a man a customer."

ONE WHO HAS ACCOUNT WITH BANKER IS

Now, I understood that case to confine the protection to cases where the banker collects for a customer in the strict sense, a person, that is, who has an account with him. And so it was judicially interpreted. In *Lacave & Co. v. Credit Lyonnais*, in 1896 (1897, 1 Q.B. 154), Collins, J., in his judgment, said as follows: "Now I am clearly of opinion that Ponce "was not a customer of the bank. Sir R. Reid contended that "sec. 82 could not be taken to limit the protection to the case "of the cheque being collected for a customer in the ordinary "sense, that is, a person who kept an account at the bank. He "says that 'the customer' must be used in a larger sense of the "word, and, practically, as far as I could see, must be taken to "mean anyone. I cannot see any dividing line between a person "who has no account and anyone who chooses to come with a "cheque and ask the bank to collect it for him. Sir R. Reid "called the attention of the Court to a decision which undoubt- "edly decided that no one but a customer in the proper sense of "the word, a person having an account at the bank, would be "entitled to the benefit of this section. That is the case of "*Matthews v. Brown & Co.*, decided in the year 1894."

So I think we all regarded that as settled, viz., that in order to claim the benefit of sec. 82, the person you collected for must have been a customer, in the sense of a person who kept an account with you.

But recent cases, if they can be trusted, have extended the protection somewhat. I am not complaining, the larger protection bankers can successfully claim, the better pleased I am, but I have my doubts as to one, at least, of these later cases.

ONE WHOSE ACCOUNT IS OVERDRAWN STILL A CUSTOMER

Now, the first case in order of date, *Clarke v. The London and County Bank*, in 1897 (1897, 1 Q.B. 553), has really more

bearing on the second point, viz., as to what is receiving payment for a customer. But it establishes this, at any rate, that a customer continues to be a customer, although his account is overdrawn. I will deal with the case more fully later. Suffice it to say that so far as the mere question of "customer" goes, I think it is right. I do not see that a man ceases to be your customer because he is overdrawn, it may be only temporarily. I think that the granting of overdrafts, with or without security, is now a recognized part of a banker's usual business. I think a man who borrows from his banker is just as much a customer as he is when he lends his banker money. As long ago as 1868, in the case of *Hardy v. Veasey*, this was recognized. That was an action by a customer against his bankers for disclosing the state of his account without justifiable cause. The banker set up that the plaintiff's account was at the time overdrawn, so that there was no relation of banker and customer existing. But the Court did not adopt this view. Baron Channel distinctly says: "I do not agree with the argument "that, because the plaintiff's account was overdrawn he had "therefore ceased to be a customer."

Then we get an extension, so to speak, at the other end. Granted that a man does not cease to be your customer for the purposes of this section when he gets on what might be called the wrong side of your books, when he changes from creditor to debtor; when, then, does he become a customer?

PERSON OPENING ACCOUNT WITH STOLEN CROSSED CHEQUE MAY THUS BECOME A CUSTOMER

After what we have heard about habit and usage, one might expect that some continuance of dealing, an account of some standing, even if it had ultimately got on the wrong side, was necessary to constitute a man a customer. But recent decisions appear to suggest an even more liberal view of the commencement of the relationship of banker and customer than of its continuance. I should have had serious doubts myself whether a first transaction, the opening of an account with a stolen crossed cheque, bearing a forged endorsement, and possibly marked not negotiable, would constitute the person who had forged the endorsement and opened the account a customer, so

as to entitle the collecting banker to the protection of this section in regard to that particular cheque as against the true owner. Of course, there must be a beginning of all things, but it is, to my mind, a rather large order to say that such a single transaction, followed by no other dealings, as indeed it was not likely to be, can constitute a man a customer, can bring the banker within the condition of having received payment of the cheque for a customer in good faith and without negligence; in short, entitle the banker to the protection of sec. 82.

But so it would seem to be.

There is a very recent case, called *Tate v. the Wilts and Dorset Bank, Ltd.*, decided about a year ago.* Tate, the plaintiff, on May 25th, 1898, forwarded a crossed cheque for £25 to George Dixon, in part payment for scrap-iron. There was no George Dixon, but a man named Laidman seems to have traded, or pretended to trade, under that name, and he got the cheque. On May 26th he took it to the defendant bank, said he was the payee, and asked them to cash it for him. They knew nothing about him, and naturally said they could not cash it. He then asked them to collect it for him, and said he should probably open an account with the £25. The bank arranged to collect the cheque, and asked the bank on which it was drawn whether it would be paid. Next day the bank got a telegram to say it would be paid; they placed the £25 to Laidman's account, and he at once drew a cheque against it. No scrap-iron was ever delivered to the plaintiff; and it was afterwards discovered that Laidman had already been convicted for obtaining money under false pretenses, and that as a matter of fact he did not carry on any trade, and the whole thing was a fraud from beginning to end. Not unnaturally the plaintiff sought to get his money back from the bank, but he did not get it.

It is noticeable that in this case the defendants ultimately abandoned the contention that Laidman was a customer. Nevertheless, the Court seem to have suggested he was one. The remarks I am about to quote are *obiter dicta*; the Court really decided on other grounds, but the Court must have held the view somewhat strongly, seeing how it is dwelt on after having been given up by counsel.

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*Reported at p. 65, vol. VII., JOURNAL.

Darling, J., says: "I do not think the bank were merely "agents for Laidman. I think the true effect of what happened "was this: Laidman went to them and asked them if they "would cash him this cheque. They did not say anything "about the cheque, and they said neither 'we will' nor 'we will "not,' but they first of all ascertained whether the cheque would "be met if presented. They ascertained that it would be met. "Then they told Laidman that they would cash it, but cash it "in what circumstances?

"I do not think that they did say that they would cash it "merely as his agents, but he was going to open an account "with them. *He was not a customer* at that moment, *but he "was going to become a customer if that cheque was collected.* "The bank would allow Laidman to open an account if he "brought them, say twenty-five sovereigns; they would not "allow him to open the account if he brought the cheque, as to "which it was problematical whether it would be cashed or not, "but having ascertained that the cheque was equivalent to cash, "they allowed him to open the account, and thereupon they "allowed Laidman to draw against the money which they "obtained from the cheque."

Now, that clearly implies that a first and only transaction may be sufficient to constitute the relation of banker and customer for the purposes of this section. And one may remark in passing, that in the opinion of this particular Court the fact of opening such an account for a perfect stranger, in a name other than that of the payee of the cheque, on his bare assurance that one was his trade name, the other his private name, without making any enquiries beyond whether the cheque would be paid, constituted neither negligence nor a breach of good faith, and so the bank were entitled to the protection of the section. That by the way. The main point is the judicial intimation that a man becomes a customer from the moment he opens an account with an uncleared cheque. Here, again, I do not mind; it is a point in favour of the banker, such as I always welcome, only I do not exactly see where the idea of habit, of custom, comes in, and it is somewhat difficult to reconcile this case with the earlier ones of which we have been speaking.

GRATUITOUSLY CASHING SERIES OF CHEQUES FOR PERSON HAVING NO ACCOUNT DOES NOT MAKE HIM A CUSTOMER—GREAT WESTERN RAILWAY V. L. AND C. BANK DISCUSSED AND DISSENTED FROM

Up to this point, in this series of customer cases, we have anyway had in each an account of some sort; we have had the "casual customer's account," the overdrawn account, the account opened and closing with the particular cheque in respect of which protection was claimed, but according to another recent decision, even the formality of an account may be dispensed with, and yet the banker may claim and obtain the protection of this sec. 82. The case is that of the *Great Western Railway v. the London and County Bank* decided in the Commercial Court by Bigham, J., without a jury, on July 22nd, 1899, and reported in the Law Reports, 1899, 2 Q.B. 172. I take the facts from Mr. Justice Bigham's own judgment as reported in the law reports quoting his own words: "One Huggins had been for many years " a rate collector in the employment of the Wantage Rural Dis- " trict Council and other similar bodies. In that capacity he had " been in the habit of receiving cheques from various people in " payment of rates. The cheques he received he used frequently " to cash through the defendant's branch bank at Wantage. He " had been in the habit of cashing cheques in this way from " fifteen to twenty years, and a considerable number of such " cheques (fifty or sixty) were cashed by him in the course of " each year. Apparently Huggins, on receipt of the money for " the cheques, distributed it among the local bodies to whom he " had to account. He was well known to the manager and " officials of the bank at Wantage. The bank were the bankers " of the Wantage Rural District Council. Huggins, however, " kept no account with the defendants, nor had he any pass " book; each of his transactions with the defendants was com- " pletely disposed of as and when he brought the cheque. In " November, 1898, Huggins falsely pretended to the plaintiffs " that a rate had been made, and that the plaintiffs owed in " respect of the same £142 10s. By this means he induced the " plaintiffs to give him their cheque for that amount. The " cheque was drawn on the London Joint Stock Bank, in favour " of Huggins or order; it was crossed generally, and marked " 'not negotiable.' On November 16th, Huggins, in accordance

"with his usual course of dealing with the defendants, took this "cheque to their bank at Wantage to get it cashed. He "handed it across the counter to the bank clerk, and the latter "filled up a paying-in slip, which Huggins signed. This pay-"ing-in slip contained no reference to the cheque itself, but "purported to show a payment into the bank of £142 10s. in "money, a payment out to Huggins of £117 10s., and a pay-"ment to the credit of the District Council's account, at "Huggins' request, of £25. The business effect of this was "that the bank handed to Huggins the amount of the cheque, "£142 10s., which he then and there disposed of to his own "use." This last phrase of Mr. Justice Bigham's is not quite clear.

I should rather gather that Huggins had intercepted some other £25 which ought to have gone to the Council's credit, and took this method of putting things straight with them, so that though out of this particular transaction he only got £117 10. in cash for himself, the effect, at any rate, so far as the plaintiffs were concerned, was just the same as if he had received the whole £142 10s. for the cheque and spent £25 of it on clothes or cigars, or anything else. Mr. Justice Bigham continues: "Having thus obtained the cheque, the defendants crossed it to "themselves, and sent it up to their head office in London for "collection." Here let me interpose a remark.

The bank crossed this cheque specially to themselves under the power conferred by sec. 77, sub.-sec. 6, which says: "When "an uncrossed cheque or a cheque crossed generally is *sent* to a "banker for collection, he may cross it specially to himself."

Now, apart altogether from the question whether the Wantage branch ever took this cheque for collection in the legal sense, which I very much doubt, it certainly never was *sent* to them for collection. It was brought to them personally by the payee, the person for whom, if for anyone, it was to be collected. Bringing is not the same as sending. "Whom shall we send, and who will go for us. And I said, here am I, send me." The Bible is never wrong in its English. Sending implies and requires an intermediary, a go-between, a messenger. I daresay a Court would disregard this distinction, but there is quite enough ambiguity about this sub-section, particularly with

regard to the question whether the crossing to himself by a banker who takes an uncrossed cheque for collection brings him within the protection of sec. 82, to make it a pity that further doubt should arise from the use of a word which grammatically, at any rate, would exclude the case of the payee's bringing the cheque himself, while it includes the case of the payee's clerk bringing it or its coming by post, while there can be no earthly reason for any such distinction.

In the present case, of course, this question could not arise, inasmuch as the cheque was crossed generally when issued, and I only notice it in order that we may bear it in mind if ever the time comes for correcting some of the ambiguous phrases in the Bills of Exchange Act.

To continue Mr. Justice Bigham's judgment in this case: "The cheque," he says, "was duly presented and paid. The "question is whether the defendants are liable to account to the "plaintiffs for the money so received." And after dealing with the case from one or two other points of view, which I need not deal with here, he continues; "Only one question then remains, "the real question in the case. Was Huggins a customer "within the meaning of sec. 82? Now, whether a person is or "is not a customer of a bank must be a question of fact to be "determined with reference to the circumstances of each case. "It is undesirable to attempt to define what constitutes a man "a customer of a bank. It is much better to leave the question "at large, so that the jury or the Court may deal with each case "as it arises. The Act of Parliament has not attempted any "definition; banker is defined, but not customer, and I think "the Legislature wisely omitted to define the expression. Then "was Huggins, in fact, a customer. I think he was. He had "been in the habit for many years of using the defendant bank "in connection with transactions which undoubtedly constitute "part of a banker's business, namely, the collection of cheques, "and he was well known to the bank. This is, I think, suffi- "cient to constitute him a customer within the meaning of the "section."

And on that basis, Mr. Justice Bigham gave judgment for the defendant bank. I should add that, during the course of the case, he had previously said: "Whether a man is a customer is a question of fact."

QUESTION ONLY OF LAW, NOT ONE OF FACT

Now, this case has aroused a good deal of surprise and adverse criticism, and is not unnaturally under appeal. Speaking for myself, I consider (1) the question whether a man is a customer of a bank within sec. 82 is not a question of fact; (2) if it is, a man whose dealings with a bank are confined to dealings similar to Huggins and the Wantage branch of the London and County Bank is not in fact a customer of that bank.

First.—The question of whether or no a man was at a particular date a customer within the meaning and for the purposes of this section is not the sort of question of fact which it is within the province of a jury, or a judge sitting as a jury, to settle in this summary manner, irrespective of, or in the teeth of, previous decisions. It is not the same sort of question of fact as the boundary line between two estates, or whether the signature on a bill is genuine or a forgery. It is far more like the construction or interpretation of a word or phrase in a statute or a contract which, of course, is a question of law. It was certainly never regarded as a question of fact until Bigham, J., so declared it in this case. In that case against Williams, Brown & Co., the Court did not so treat it, but expressed their own views as to what were the conditions necessary in law to constitute a man a customer, and so again in a minor degree in that case of *Tate v. the Wilts and Dorset Bank*. You may say that everybody knows what a customer is, that it is really only a question of fact whether a certain person does or does not come within a certain recognized absolute description or definition, as if it were a question whether a man was six foot high or not. I do not think so; occurring as the word does in a statute, and expressing one of the factors or incidents essential to the existence of certain legal rights and protections, it is a legal definition, and ought to be dealt with as such, much on the same footing as when the Act describes a holder in due course as one who takes a bill complete on the face of it for value and without any notice of any infirmity of title. Notice and value are as ordinary terms as is customer. But if the question whether a man took for value and without notice were left in those terms to a common jury, they would more likely go wrong than right. They would not know that a past consideration is value, and

natural love and affection is not; that negligence is not notice, but wilful abstention from enquiry is; they would probably interpret the words in a popular sense very different from the construction put upon them by successive decisions of the Courts. As to Mr. Justice Bigham's assumption that the Act defining "banker" and not "customer" indicates the intention of the Legislature that the jury should be left at large to find the question of customer or not as a question of fact, I must say I fail to see the argument. As a matter of fact, the Act does not really define "banker." It says (sec. 2): "'Banker' includes a body of persons, whether incorporated or not, who carry on the business of "banking," and that is all. It is really only the usual interpretation clause that "the singular shall include the "plural." It does not really define "banker" or "banking," and was not meant to. If it was meant to define a banker, it would be exactly like the well-known definition of an archdeacon as "one who performs archidiaconal functions." So no inference can be drawn from this that because customer is not defined it was meant to be a question of fact for a jury.

Even if Mr. Justice Bigham were right in stating that the Act defines banker and not customer, it seems to me that the argument is the other way about. If banker or no banker is a question of legal construction, surely customer or no customer, which is the absolute correlative, must be the same. So that I cannot help thinking Mr. Justice Bigham erred in considering this as a pure question of fact, and treating it as such, and I have little doubt the Court of Appeal will take the same view. The Court of Appeal have full power to deal with the question, whether of fact or of law. Where a case is tried, as this one was, before a judge alone, the Court of Appeal has an absolutely free hand in deciding the question of fact no less than that of law. This is worth your noticing, seeing that the majority of cases are now tried without juries. It has only very recently been settled.

It used to be the opinion that the finding of a judge on a question of fact was precisely equivalent to the finding of a jury, and that the Court of Appeal could not go behind such a finding unless it was palpably and hopelessly wrong. That view is now completely upset. By a decision of the Court of Appeal, and

still more recently by the House of Lords in the case of *Hickman v. Thierry*, it has been finally declared that when a case tried by a judge alone, be he Chancery or Queen's Bench Division, comes into the Court of Appeal, there is not even any presumption that the finding of fact by the judge is right ; that the hearing by the Court of Appeal is absolutely a re-hearing of the case on the evidence taken below, and such new evidence as the Court of Appeal may see fit to admit. It is a curious vindication of the British jury, this recognition that the twelve men in the box are so much more likely to be right on the facts than the one man on the bench.

So that the main evils when a judge goes out of his way to find as a question of fact that which is not really one, are first, that he drives the defeated party to the Court of Appeal, and secondly, that when, as Mr. Justice Bigham did, he gives his reasons for arriving at such conclusions of fact, he imports an element of law, he is, as judge, directing or summing up to himself as jury, and if the case does not go to appeal, such remarks may be quoted in later cases as an authority, apart from the actual facts.

But whether you look at it as a question of law or a question of fact, is a man whose only connection and dealings with a bank are such as were those of Huggins with the Wantage branch of the London and County, a customer of that bank within the meaning of sec. 82 of the Bills of Exchange Act, or even at all ?

CASHING DISTINGUISHED FROM COLLECTING

What had been the dealings between Huggins and the bank ? He had for fifteen or twenty years brought to them between fifty and sixty crossed cheques in each year payable to him, for which he had received cash over the counter. Bigham, J., says : "That was using the defendant bank in connection "with transactions which undoubtedly constitute part of a "banker's business, namely the collection of cheques." I am not here going into the question of what is legitimately included in the term "collection of cheques." You know my views on that subject by this time. But I think you will admit that from

a business point of view what the bank habitually did for Huggins was a good way off what we understand by "collecting cheques."

I think we all recognize cashing a crossed cheque over the counter as meaning a definite understood operation, and "collecting it," though it may include some varying states of circumstances, as at any rate differing from and not including the operation of cashing it over the counter. Of course, the word "collecting" is not used in the section, the words are "receives payment for a customer," but the phrases are generally understood to mean much the same thing.

What I am taking exception to is that Mr. Justice Bigham is seeking to show that Huggins was a customer because, in getting the bank to cash these cheques over the counter, he was using the bank in connection with that part of a banker's business which consists of collecting cheques. I cannot see this. If the two processes have any connection, it is very remote. Mr. Justice Bigham suggests that the operation was that the bank advanced the money to Huggins on the cheques, collected them for him, and then paid themselves back. This view may be applicable to some cases which I have hitherto declined to look on as collection pure and simple, but I submit this is not the view in which cashing a cheque over the counter has ever yet been regarded. Say you make a charge for cashing it. Then you either purchase the cheque or discount it, though I always fail to see where discount comes in with regard to an instrument payable on demand. Admitting it is discount, though bankers do indisputably discount bills, the discounting of bills is not the sort of banking business contemplated by the Act. Where the Act talks of banker and customer, it means banker and customer in the ordinary course of banking business. The Privy Council in *Gaden v. The Newfoundland Savings Bank*, expressly distinguish between a bank of deposit or an ordinary bank and a discount bank. Anybody can discount or purchase a bill or a cheque if he likes, but then it does not make him a banker. But supposing you make no charge and give the full face value over the counter. This was a feature in Huggins' dealings with the bank, and seems to put them out of all connection, however remote, with banking business of any sort.

We are bound to take the particular transaction which gave rise to this action as typical of all the preceding ones. Now, in this particular transaction, you may have noticed that it was entirely gratuitous on the part of the bank. Huggins brought them this cheque for £142 10s., he got £117 10s. in cash over the counter for it, and by his direction the bank put £25 to the credit of the District Council's account with them. Total £142 10s. So that the bank did not make one penny out of the transaction, nor, we must conclude, out of any of their transactions with Huggins, spread over some fifteen or twenty years. Now, banking business does not consist of the gratuitous cashing or even collection of crossed cheques; it would be a poor business if it did. Of course, you may collect cheques without making any specific charge, where it is in connection with an account, just as you may take charge of a man's plate because he keeps an account with you. But in either case it is the keeping of his account which makes him a customer. A customer implies a business relation, and business implies profit. Because you do gratuitously for A, with whom you have no business relations, what you do gratuitously for B, with whom you have business relations, that does not establish business relations between you and A. That is where Mr. Justice Bigham goes wrong. May I use an undignified illustration. You may recollect an old picture in *Punch*, where a little urchin is represented in a public house, saying to the publican: "Please let father have the evening paper and a clean pipe; he gets drunk here every Saturday night." If the publican complies, he does the gratuitous act for a customer, but it is the business relation with father on Saturday night which constitutes father a customer, not the free pipe and paper.

Then Mr. Justice Bigham says Huggins was "well known to the bank." Well, of course, in previous cases where the protection of the section has been denied to the banker, Courts have said the person posing as a customer was a mere stranger and so on. But that was merely their way of expressing the absurdity of his claiming, or the bank's claiming for him, that he was a customer. It does not establish the proposition that everyone who is not an absolute stranger is a customer. A lawyer may have friends who are not clients, a doctor may have

friends who are not patients. There is a very nice old gentleman from whom I generally get a *Westminster Gazette* on my way home, and whom I always find at one of the entrances to the Law Courts branch of Lloyds Bank. Well, I dare say he is well known to the officials of that branch of Lloyds Bank, but does that constitute him a customer ? I opine not.

SUMMARY

Unless a man keeps an account, or unless he otherwise regularly deals with a bank in some recognized banking business relation which is productive of profit to both parties, you may take it from me he is not a customer within sec. 82 of the Bills of Exchange Act.

AN ACT TO INCORPORATE THE CANADIAN BANKERS' ASSOCIATION

WHEREAS the voluntary association now existing under the name of the Canadian Bankers' Association has, by its petition, prayed that it may be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Preamble.

Incorporation.

1. There is hereby created and constituted a corporation under the name of "The Canadian Bankers' Association," hereinafter called "the Association."

Association, how composed. Members.

2. The Association shall consist of members and associates; (*a*) The members hereinafter referred to as members, shall be the banks named in the schedule to this Act, and such new banks hereafter incorporated by or under the authority of the Parliament of Canada as become entitled to carry on the business of banking in Canada, and to which *The Bank Act* in force at the time of its incorporation applies. Any bank to which *The Bank Act* applies, carrying on business in Canada, and not named in the schedule to this Act, shall on its own application at any time be admitted as a member of the Association by resolution of the Executive Council hereinafter named;

Associates.

(*b*.) The associates, hereinafter referred to as associates, shall be the bank officers who are associates of the voluntary association mentioned in the preamble at the time this Act is passed, and such other officers of the banks which are members of the Association as may be elected at a meeting of the Executive Council hereinafter named or at an annual meeting of the Association. An associate may at any time by written notice to the president of the Association withdraw from the Association.

Effect of bank suspending.

3. Upon the suspension of payment of a bank being a member of the Association, such bank shall cease to be a member. Provided however, that if and when such bank resumes the carrying on of its business in Canada it may again become a member of the Association.

When associate ceases to be such.

4. Upon an associate ceasing to be an officer of a bank carrying on business in Canada, he shall, at the end of the then current calendar year, cease to be an associate.

Objects of Association.

5. The objects and powers of the Association shall be, to promote generally the interests and efficiency of banks and bank officers and the education and training of those contemplating employment in banks, and for such purposes, among other means, to arrange for lectures, discussions, competitive papers and examinations on commercial law and banking, and to acquire, publish and carry on the "Journal of The Canadian Bankers' Association."

Subsections of Association.

6. The Association may from time to time establish in any place in Canada a subsection of the Association under such constitution and with such powers (not exceeding the powers of the Association) as may be thought best.

Clearing houses.

7. The Association may from time to time establish in any place in Canada a clearing house for banks, and make rules and regulations for the operations of such clearing house: Provided always, that no bank shall be or become a member of such clearing house except with its own consent, and a bank may after becoming such member at any time withdraw therefrom.

Regulations.

2. All banks, whether members of the Association or not, shall have an equal voice in making from time to time the rules and regulations for the clearing house; but no such rule or regulation shall have any force or effect until approved of by the Treasury Board.

Voting powers.

8. Members of the Association shall vote and act in all matters relating to the Association through their chief executive officers. For the purposes of this Act the chief executive officer of a member shall be its general manager or cashier, or in his absence the officer designated for the purpose by him, or in default of such designation the officer next in authority. Where the president or vice-president of a member performs the duties of a general manager or cashier he shall be the chief executive officer, and in his absence the officer designated for the purpose by him, and in default of such designation the officer next in authority to him. At all meetings of the Association each member shall have one vote upon each matter submitted for vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting

vote in case of a tie. Associates shall have only such powers of voting and otherwise taking part at meetings as may be provided by by-law.

Officers.

9. There shall be a president and one or more vice-presidents and an executive council of the Association, of which council five shall form a quorum unless the by-laws otherwise provide.

Officers of existing association continued.

10. The persons who are the president, vice-presidents and executive council of the voluntary association mentioned in the preamble at the time this Act is passed shall be the president, vice-presidents and executive council respectively of the Association until the first general meeting of the Association or until their successors are appointed.

General meetings.

11. The first general meeting of the Association shall be held during the present calendar year at such time and place and upon such notice as the executive council may decide. Subsequent general meetings shall be held as the by-laws of the Association may provide at least once in each calendar year.

Election of Officers.

12. At the first general meeting and at each annual meeting thereafter the members of the Association shall elect a president, one or more vice-presidents and an executive council, all of whom shall hold office until the next annual general meeting or until their successors are appointed.

Executive officers.

13. The president, vice-presidents and executive council shall be chosen from among the chief executive officers of members of the Association.

Executive council.

14. Unless the by-laws otherwise provide, the executive council shall consist of the president and vice-presidents of the Association and fourteen chief executive officers, and five shall form a quorum for the transaction of business.

Dues.

15. Each member and associate shall from time to time pay to the Association for the purposes thereof such dues and assessments as shall from time to time be fixed in that behalf by the Association at any annual meeting, or at any special meeting called for the purpose, by a vote of not less than two-thirds of those present or represented by proxy.

By-laws governing Association.

16. The objects and powers of the Association shall be carried out and exercised by the executive

council, or under by-laws, resolutions, rules and regulations passed by it, but every such by-law, rule and regulation, unless in the meantime confirmed at a general meeting of the Association called for the purpose of considering the same, shall only have force until the next annual meeting, and in default of confirmation thereat shall cease to have force. Provided always, that any by-law, rule or regulation passed by the executive council may be repealed, amended, varied or otherwise dealt with by the Association at any annual general meeting or at a special general meeting called for the purpose.

Power of executive to pass bylaws.

2. For greater certainty, but not so as to restrict the generality of the foregoing, it is declared that the executive council shall have power to pass by-laws, resolutions, rules and regulations, not contrary to law or to the provisions of this Act, respecting—

(*a*) lectures, discussions, competitive papers, examinations;
(*b*) the journal of the Association ;
(*c*) the sub-sections of the Association;
(*d*) clearing houses for banks;
(*e*) general meetings, special and annual, of the Association and of the executive council, and the procedure and quorum thereat, including the part to be taken by associates and their powers of voting ;
(*f*) voting by proxy at meetings of the Association and of the executive council;
(*g*) the appointment, functions, duties, remuneration and removal of officers, agents and servants of the Association.

Approval of Treasury Board.

3. No by-law, resolution, rule or regulation respecting clearing houses, and no repeal amendment, or variation of or other dealing with any such by-law, resolution, rule or regulation shall have any force or effect until approved of by the Treasury Board.

R.S.C., c. 118.

17. The provisions of *The Companies Clauses Act*, being chapter 118 of the Revised Statutes, shall not apply to the Association.

SCHEDULE.

BANKS BEING MEMBERS OF THE ASSOCIATION

The Bank of Montreal	The Eastern Townships Bank
The Quebec Bank	La Banque Nationale
The Molsons Bank	La Banque Jacques Cartier
The Bank of Toronto	The Merchants' B'k of Canada
The Ontario Bank	The Union Bank of Canada

The Canadian B'k of Commerce
The Dominion Bank
The Merchants' B'k of Halifax
The Bank of Yarmouth, Nova Scotia
The Standard Bank of Canada
The Bank of Hamilton
The Halifax Banking Company
La Banque d'Hochelaga
The Imperial Bank of Canada
La Banque de St. Hyacinthe
The Bank of Ottawa
The Bank of New Brunswick
The Exchange Bank of Yarmouth
The Union Bank of Halifax
The People's Bank of Halifax
La Banque de St. Jean
The Commercial Bank of Windsor
The Western Bank of Canada
The Traders' Bank of Canada
The People's Bank of New Brunswick
The Saint Stephen's Bank
The Summerside Bank
The Bank of British North America
The Bank of British Columbia

QUESTIONS ON POINTS OF PRACTICAL INTEREST

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Note payable "on or before" 1st July

QUESTION 335.—Would a promissory note made payable "on or before 1st July" come within the terms of the Bills of Exchange Act?

ANSWER.—We think such a note is "payable at a determinable future time, within the meaning of the Act," and that it therefore comes within its terms. The case of *De Braam v. Ford*, as reported at page 178 of the current volume of the JOURNAL threw some doubt on this, but the judgment of the Court of Appeal in the same case, reported in the April number (page 304), clears the matter up.

Protest of bills

QUESTION 336.—Do the laws on banking customs relating to the protesting of bills of exchange for non-acceptance and non-payment differ as between Canada and the State of New York?

ANSWER.—This is rather too wide a question for us to undertake to answer. There are statutory provisions in New York which differ from ours and we would require to know the exact point in view before answering.

Warehouse receipt security acquired for an overdraft without a "written promise"

QUESTION 337.—A customer's account has been overdrawn for some days, an advance by way of overdraft having been granted without having a written promise to give security. If a note is subsequently discounted, with a warehouse receipt attached for the purpose of covering the overdraft, is the bank's title to the warehouse receipt good?

ANSWER.—On the bare statement of facts here submitted we would think that the warehouse receipt has not been validly acquired. It was not acquired when the loan was made, and there was no "written promise" to validate a transfer after the loan had been made.

Promise to give security under Sec. 73, 74 and 75 of the Bank Act

QUESTION 338.—A grain dealer gives the bank a promise in writing to the following effect: "In consideration of the bank "making advances to me from time to time in connection with "my grain business, I hereby engage to hand the bank as "security therefor, bills of lading, warehouse receipts, or pledges "under sections 73, 74 and 75 of the Bank Act."

Would this agreement give the bank a preferred claim in the event of the customer's failure?

ANSWER.—A written promise of this kind, unless followed up by the actual delivery of the security, would have no effect in the event of a customer's failure. We also have some doubts whether a promise in this form is sufficient to support the subsequent transfer to the bank of the securities mentioned. We think something more specific, both as to the loans and as to the security, is necessary.

Security under Sec. 68 of the Bank Act

QUESTION 339.—Would section 68 of the Bank Act permit the taking of a mortgage on a vessel for a loan made simultaneously?

ANSWER.—The section referred to authorizes a bank to take a mortgage "as additional security for a debt contracted to the bank in the course of its business." The latter part of section 64 declares that the bank "shall not either directly or indirectly lend money on the security of any ships." It is clear that the power given in section 68 cannot be used in contravention of section 64, and if the mortgage were given simultaneously with the loan it would require very special circumstances to convince the court that sec. 64 had not been contravened.

Under section 72 the bank may advance money for the building of a vessel, and may take security for such advances on the vessel when completed. We do not understand the question, however, as referring to this kind of transaction.

Security under Sec. 74 of the Bank Act

QUESTION 340.—A bank has made advances for which it holds security, under section 74, on logs on the banks of a certain river within a defined timber limit. The logs have to be moved in the spring. Should the bank at the time of making the loan take a written promise to give security on the logs when they have been moved down the river, or will it be sufficient to have an endorsement on the original security to the effect that the logs therein described are now in a certain boom and held to the order of the bank?

ANSWER.—The bank's right to hold the logs as security is not affected by their removal, and no other or further security is necessary. A statement to the effect that the logs are now stored in a particular boom might be useful as evidence, but other credible evidence would serve as well. We do not think any statement of the kind should be endorsed on the security itself; the less that is interfered with the better. It should be borne in mind that the original description must be of such a nature as to enable the bank to identify the logs, even although their location should be changed, and if any change takes place in the location of the logs the bank should be put in possession of evidence of the change.

Joint Stock Companies—Powers of Officers

QUESTION 341.—The shareholders of a company incorporated in Ontario pass a by-law authorizing the directors to appoint a president and other officers, and declaring that the president is to be the manager of the company, with power "to "exercise all such powers of the company as are not required "by law to be exercised by the directors or by the company in "general meeting." Would this by-law empower the president to sign cheques, acceptances, etc., on behalf of the company?

ANSWER.—We think that the by-law is quite sufficient for the purpose named.

Accepted bill of exchange with bill of lading attached—goods not up to sample

QUESTION 342.—A bank holds a bill of exchange accepted by the drawee, to which is attached a bill of lading for wheat to the order of the bank. Before the bill matures the drawee finds

that the wheat is not up to the sample and refuses payment. Is the acceptor's obligation on the bill affected by the defect in the security?

Answer.—Unless the acceptor could raise such a case against the bank as would entitle him to repudiate his acceptance *in toto* on the ground of fraud or misrepresentation, we think that he is liable for the full amount of the bill. Any remedy he has would be against the person responsible to him for the defect in quality of the wheat.

Question 343.—With further reference to the above, the draft in question has stamped across it "documents attached "to be surrendered only on payment of draft," and written on it by the manager of the bank which holds it, the words: "Bill of "Lading attached, 500 bushels wheat, car No. 1,524." These additions to the draft were on it when it was presented for acceptance and the Bill of Lading described was attached. The acceptor claims that the words written and stamped on the draft by the bank entitle him to look to the bank for delivery of the wheat described in the Bill of Lading, and that the bank is in no better position to enforce payment of the draft than the drawer. Is this so, and is the bank in any way responsible?

Answer.—We think not. Even if the phrases mentioned were to be taken as representations held out by the bank to induce the drawee to accept, they would be fulfilled by the surrender on payment of the bill, of the Bill of Lading actually attached at the time it was accepted.

Delivery of money parcel tendered after banking hours

Question 344.—The agent of an express company, with which a special contract exists, brings to the bank office at 5 p.m. a parcel of money, and requests the one officer whom he finds there, to take delivery. This is declined as the safe (which has a time lock) is closed. Is the express company relieved from liability because of this tender of delivery?

Answer.—When the company makes a tender of delivery at the proper time, in a proper place, to a proper officer of the bank, in accordance with the terms of the special contract, its liability under that contract would probably be no longer in force, and the company would only be liable thereafter for the ordinary care of a bailee. We do not think, however, that a tender of delivery such as that described comes within the above conditions, and we are of opinion the company's liability continues as if the tender had not been made.

Notarial charges

QUESTION 345.—Can you inform me what the legal notarial charges are in connection with the protesting of notes in the various provinces? There seems to be a wide range of difference among them.

ANSWER.—The tariff of notarial charges in the various provinces will be found in Maclaren's "Bills, Notes and Cheques," pp. 426, 427 and 428. They are too voluminous to be quoted here.

Debentures issued without coupons

QUESTION 346.—A trading company makes an issue of debentures, secured by mortgage, over all its property, to which debentures no coupons are attached. Apart from the question of the value of the property of the company would such issue be looked upon as a desirable security for advances by a bank. If not, why not?

ANSWER.—It is not made quite clear whether the question has relation to the fact that the debentures are those of a trading company, or to the fact that no coupons are attached.

As to the former we do not think that the debentures of a trading company are good security for the bank, for the reason that they are usually extremely difficult to sell.

As to the point of their not having coupons for the interest, that might or might not be a serious objection. It would no doubt in any case impair their selling value, for people would in such case have to send the debentures every time they wished to collect the interest, and if they were payable at a distance from the place where the holder resided, this might be quite a serious item. We do not, however, see any other objection from this point of view.

Procedure necessary in connection with goods held as Security under the Bank Act, offered for sale

QUESTION 347.—Is it necessary to conform to sub-section 3, section 78, Bank Act, in every respect, where goods are shipped to the United States? Must the goods be sold by auction there and is it necessary to advertise the sale in two local papers of the place where sale is to be held?

Where the bank takes action under sub-section 1, section 78, Bank Act, has the bank the privilege of holding the goods pledged till such time as in its opinion a most favorable sale can be made for all concerned. If not, what are the bank's duties in such a case?

Answer.—Unless an agreement exists making other provisions the bank should conform to sub-sec. 3, of sec. 78. The fact that the goods have been sent to the United States does not alter the obligations of the bank to the customer.

As to the place and time of sale we think the bank may exercise its discretion, if it acts in good faith.

It is customary to take from customers a letter or agreement authorizing the sale of goods without the formalities required by the Bank Act. If such a letter is held the rights of the parties would, of course, be governed thereby, and not by section 78.

Draft with the Amount in figures different from that in the body

Question 348.—The amount of a draft is expressed in words in the body as $150, the figures in the margin being $250, and is collected by a Bank from the drawee at the latter amount. Some time afterwards the drawee discovers the mistake. Has he a right to require the Bank to repay the $100?

Would the position of the parties be different (1) if the draft had been drawn on an agent of the drawee and he had received the $250, and (2) if the Bank which collected the draft merely held it for collection, and not as the owner?

Answer.—The sum denoted by the words would be the amount payable. The payment in excess of $150 would be a payment made by reason of a mistake in fact, and if the Bank were not a mere agent in the matter, the $100 would be recoverable from the Bank by the drawee.

If the Bank were an agent, but the agency were not disclosed to the drawee, the same result would appear to follow, unless upon discovering the Bank's principal the drawee chose to pursue the principal, instead of the agent.

If the Bank were an agent acting for a disclosed principal and the money received had been paid over to such principal, then the remedy of the drawee would appear to be against the principal and not against the Bank.

Legal

LEGAL DECISIONS AFFECTING BANKERS

Supreme Court of New York

Rankin v. Colonial Bank*

Plaintiff, a real-estate agent, was given two cheques drawn on defendant bank, and took one to the main office of the bank, where it was certified. He then took the second cheque to a branch office, and the teller, not knowing of the certification of the first cheque, which had made the account too short to meet the second, certified the second cheque.

Held, where the second cheque had not passed out of plaintiff's hands, and no rights of third parties had intervened, that the bank was liable, under the certification thereof, only for the balance the drawer had on hand when the certification was made.

Where a bank erroneously certified a cheque drawn by one of its depositors for rents collected by him for his employer when the depositor had not sufficient funds to meet the same, the bare fact that the employer would have discharged the depositor if the cheque had not been certified, and prevented the collection of further rents by him, whereby further loss might have been prevented, is insufficient, as an element of damages, to render the bank liable to the employer on the certification for more than the amount of the depositor's funds in its hands when the certification was made.

The facts in this case are fully stated in the following judgment of McAdam, J.:

William Lipkin had an account in the branch of the Colonial Bank at 104th street. He was the agent of William Rankin, the plaintiff, for collecting his rents. On Saturday, January 6th, Mr. Rankin had a cheque for $1,500, drawn on the bank by Lipkin, payable to the former, returned as not good. He thereupon went to the branch at 104th street, and asked about Lipkin's account. Lipkin had just deposited some money, and then Rankin was told that Lipkin had enough in the bank to pay it. He asked the teller if he would certify the cheque if he brought it, and was answered, "Yes." Rankin then went away. It appears that he got another cheque from Lipkin for $1,617.03, went to the Colonial Bank at 83rd street, and had that cheque certified. This was between 10 and 11 o'clock. He deposited that cheque in his own bank, and then

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went to the branch of the defendant's bank at 104th street, and, concealing the fact of the certification of the $1,617.03 cheque at the main office at 83rd street, had the $1,500 cheque certified at the 104th street branch. This was between 11 and 12 o'clock. The teller at the 104th street branch did not know of the certification at 83rd street, which had made Lipkin's account short. This last certification took place a little before 12 o'clock, January 6th. On Monday morning the cashier of the bank saw Mr. Rankin, and told him of the mistake, and demanded a correction. Rankin refused, and brought this suit to compel the bank to pay the $1,500 cheque on account of its certification. There were no indorsers to be charged. Lipkin, the drawer, knew that his account was short, and did not need notice to that effect. No loss has occurred on the cheque through the certification. Rankin was notified in time to prevent any possible injury. On Monday morning the notification to him was given.

The question presented is whether Rankin can, under these circumstances, maintain an action against the defendant on the $1,500 cheque by reason of its certification thereof, and, if so, the extent to which he is entitled to recover. The defendant concedes that the plaintiff is entitled to $861.51, the balance Lipkin, the drawer of the cheque, had on deposit at the time the defendant certified the cheque in suit. The controversy is as to his right to recover any more than this amount. The rule is correctly laid down by Daniel on Negotiable Instruments (section 1608), as follows:

> "If the bank certifies a cheque to be good by mistake, under the erroneous impression that the drawer had funds on deposit when in fact he had none, or has been induced by some fraudulent representation to certify it as good, the certification may be revoked and annulled, provided no change of circumstances has occurred which could render it inequitable for such right to be exercised. If the cheque still remains in the hands of the holder who held it when it was certified, and the mistake is discovered and notified to him so speedily that he has time afforded him to rectify and preserve the liability of indorsers, the bank may retract its certificate. But if another person has become the holder of it, or circumstances have so changed that rights of the holder would be prejudiced, and especially if it has been paid to a bona fide holder without notice, it is absolutely estopped from doing so.

Where a certificate is made without funds by a cashier, either by mistake or in fraud of the rights of the bank, none but a bona fide holder can enforce it. Such a certificate will bind the bank in favor of innocent third persons, upon the principle of estoppel in pais. If the plaintiff's position had been changed to his prejudice by reason of the certification, or the cheque as certified had found its way into the hands of a bona fide holder for value, and the action had been brought by him, different

questions would be presented. The cheque itself did not operate as an assignment of the funds in the hands of the defendant, and if the latter had not certified the cheque no liability whatever would have attached in favor of the plaintiff. The small deposits made by Lipkin subsequent to the certification do not increase the defendant's liability. The defendant might have applied them to the cheque held by the plaintiff, but the plaintiff cannot compel the defendant to make such application, the relation occupied by the bank and its depositor in respect thereto being that of debtor and creditor. The plaintiff claims that if the cheque had not been certified he would have discharged Lipkin from his agency at once, and in that way prevented the collection of further rents by him, whereby loss might have been prevented. But such damages are altogether too remote to be recoverable against the defendant. Embezzlement and felonious breach of trust by an agent is by the Penal Code made larceny and it is difficult to discover any legal principle for holding the bank responsible for felonious acts of dishonesty committed by the plaintiff's chosen agent. The defendant did not contract with reference to any such contingency, for it had the right to assume that the plaintiff had selected an honest agent, such would naturally be within the contemplation of the parties. There is a well-known rule by which the principal is made liable to a third person for the fraud or other misfeasance of his agent perpetrated by the latter in the course of his employment, although the principal did not authorize, justify, or know of his misconduct, but the converse of the rule has never been asserted or applied by any law writer or jurist. In conclusion, the court decides that the certification, at best, simply holds the defendant to the plaintiff for the moneys in the hands of the defendant at the time the certification was made, and for this sum ($861.51), with interest, the plaintiff is entitled to judgment.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

	1898-9		1899-1900	
Nine months ending March—				
Free	$43,940		$50,679	
Dutiable	64,772		79,016	
	$108,712		$129,695	
Bullion and Coin	4,078	$112,790	5,963	$135,65
Month of April—				
Free	$ 4,381		$ 5,151	
Dutiable	8,033		8,456	
	$12,414		$13,607	
Bullion and Coin	38	$12,452	330	$13,938
Month of May—				
Free	$ 5,280		$ 6,135	
Dutiable	7,379		8,670	
	$12,639		$14,805	
Bullion and Coin	387	$13,026	397	$15,203
Total for eleven months		$138,268		$164,800

EXPORTS

	1898-9		1899-1900	
Nine months ending March—				
Products of the mine	$10,073		$ 9,652	
" Fisheries	7,528		8,631	
" Forest	20,908		23,416	
Animals and their produce	38,926		45,986	
Agricultural produce	18,783		21,770	
Manufactures	8,173		9,843	
Miscellaneous	153		268	
	$104,544		$119,569	
Bullion and Coin	3,519	$108,063	7,909	$127,47
Month of April—				
Products of the mine	$ 700		$ 1,180	
" Fisheries	355		417	
" Forest	1,093		1,161	
Animals and their produce	2,092		2,201	
Agricultural produce	1,202		1,640	
Manufactures	1,063		1,275	
Miscellaneous	11		16	
	$6,517		$7,892	
Bullion and Coin	226	$6,743	213	$8,005

Month of May—				
Products of the mine............	$ 1,425		$ 1,578	
" Fisheries........	739		882	
" Forest	1,732		1,755	
Animals and their produce	2,078		2,715	
Agricultural produce	1,437		1,636	
Manufactures	1,146		1,286	
Miscellaneous	11		29	
	$ 8,568		$ 9,884	
Bullion and Coin................	127	$8,695	235	$10,120
Total for seven months......		$123,501		$145,604

SUMMARY (in dollars)

For eleven months—		1898-9		1899-1900
Total imports, other than bullion and coin..		$133,765,000		$158,200,000
Total exports, other than bullion and coin..		119,629,000		137,400,000
Excess	(*Exp.*)	$14,136,000	(*Imp.*)	$20,800,000
Bullion and coin, net................	(*Exp.*)	631,000	(*Exp.*)	1,667,000

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

	MONTREAL		TORONTO		HALIFAX		HAMILTON	
	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00
	$	$	$	$	$	$	$	$
June	59,471	63,756	36,960	41,189	4,997	5,461	3,001	3,224
July......	60,423	63,209	35,727	40,569	5,851	4,742	3,117	3,304
August ..	55,578	63,115	32,390	37,207	5,551	7,823	2,655	3,138
September	61,856	64,163	33,932	39,842	4,919	5,937	2,773	3,590
October ..	66,354	69,792	38,349	46,979	5,408	6,795	3,103	3,608
November	67,246	71,101	39,125	44,637	5,154	6,645	3 147	3,680
December	69,143	68,979	43,508	47,011	5,838	6,744	3,334	3,730
January ..	64,850	62,853	42,388	45,114	5,913	6,707	3,274	3,742
February .	62,432	54,250	40,818	37,864	4,583	5,354	2,807	3,040
March ...	62,043	54,882	39,012	40,581	5,285	5,868	3,021	3,171
April	50,003	55,915	33,035	38,842	4,472	6,004	2,858	3,099
May	56,475	62,332	34,374	43,215	4,798	5,984	2,932	3,493
	735,874	754,347	449,618	503,050	62,769	74,064	36,022	40,819

	WINNIPEG		ST. JOHN		VANCOUVER	VICTORIA
	1898-9	1899-00	1898-9	1899-00	1899-00	1899-00
	$	$	$	$	$	$
June	7,397	8,211	2,592	2,606	3,768	2,509
July......	6,316	8,169	2,927	2,753	3,355	3,087
August ..	6,180	7,995	2,059	3,103	4,929	3,039
September	6,414	8,281	2,508	3,004	4,513	3,024
October ..	9,347	12,689	2,498	2,814	4,751	3,059
November	11,553	14,435	2,660	2,903	3,785	2,588
December	10,708	12,966	2,746	2,963	4,090	3,006
January ..	7,683	9,906	2,470	3,033	3,550	3,044
February .	6,209	6,702	2,212	2,342	2,881	2,324
March ...	5,968	7,320	2,148	2,509	3,378	2,372
April	6,240	7,091	2,254	2,492	3,543	2,106
May	8,683	9,762	2,513	2,945	3,717	2,704
	92,698	113,527	29,587	33,467	46,260	32,862

STATEMENT OF BANKS acting under Dominion Government charter for the months of March, April and May, 1900, and comparison with May, 1899:

LIABILITIES

	31st March, 1900	30th April, 1900	31st May, 1900	31st May, 1899
Capital authorized	$79,108,664	$ 79,108,664	$ 79,108,664	$ 76,808,664
Capital paid up	64,245,727	64,454.351	64,589 447	63,617,335
Reserve Fund	30,416,762	30,581,347	31,699,989	28,907,231
Notes in circulation	$ 43,814,918	$ 43,908,432	42,856,762	$ 37,012,914
Dominion and Provincial Government deposits	6,134.570	5,504,111	6,130,822	6,118,160
Public deposits on demand	91,852,305	94,979,467	99,520,264	92,200,417
Public deposits after notice	172,936,941	174,041,686	176,503,361	164,117,087
Bank loans or deposits from other banks secured	479,347	568,245	479,470	42,000
Bank loans or deposits from other banks unsecured	2,371,085	2,226,568	2,622,900	3,157,160
Due other banks in Canada in daily exchanges	68,335	139,427	66,852	99,708
Due other banks in foreign countries	1,248,503	1,167,813	925,571	542,557
Due other banks in Great Britain	4,423,988	5,671,691	6,158,335	6,896,443
Other liabilities	553,626	360,726	917,941	966,061
Total liabilities	323,883,696	328,568,220	336,182,352	$311,052,591

ASSETS

Specie	$9,440,138	$10,040,239	$10,729,280	$ 9,312,898
Dominion notes	16,655,394	16,973,871	18,494,795	16,335,293
Deposits to secure note circulation	2,056,308	2,056,344	2,058,822	1,998,001
Notes and cheques of other banks	8,678,073	10,340,636	9,675,405	10,545,635
Loans to other banks secured	457,781	546,504	458,185	42,645
Deposits made with other banks	3,714,834	3,470,661	3,922,429	3,031,359
Due from other banks in Canada in daily exchanges	157,721	170,443	233,171	205,821
Due from other banks in foreign countries	16,540,872	19,148,974	21,217,311	22,055,017
Due from other banks in Great Britain	7,438,772	5,216,026	5,992,243	10,030,419
Dominion Government debentures or stock	4,509,671	4,499,049	4,510,133	5,074,746
Public, municipal and railway securities	31,517,174	31,341,084	31,230,696	30,980,200
Call loans on bonds and stocks	28,966,114	28,905,583	28,900,129	29,154,398
Current loans and discounts	279,023,194	281,615,493	282,876,813	249,159,171
Loans to Dominion and Provincial Governments	1,804,498	2,361,468	2,144,429	3,137,142
Overdue debts	1,928,177	1,897,427	1,583,931	1,942,071
Real estate	1,080,879	1,037,131	1,034,602	1,815,325
Mortgages on real estate sold	672,676	690,806	650,227	612,349
Bank premises	6,172,452	6,192,828	6,054,020	5,995,027
Other assets	3,127,156	3,209,307	4,282,541	2,250,356
Total assets	423,942,107	429,714,067	436,049,338	$403,678,070
Loans to directors or their firms	9,777,107	10,477,190	10,005,081	$7,072,041
Average amount of specie held during the month	9,586,045	9,671,682	10,147,371	9,305,520
Average Dominion notes held during the month	16,854,714	16,398,174	17,094,677	15,561,159
Greatest amount of notes in circulation during month	44,280,053	45,620,310	45,853,285	38,412,933

CANADIAN BANKERS' ASSOCIATION

LIST OF ASSOCIATES

Abbott, C. C	Bank of Montreal
Abbott, J. H	Merchants Bank of Halifax
Abernethy, A. C	Bank of British North America
Acres, J. J	Canadian Bank of Commerce
Adair, John	Canadian Bank of Commerce
Adam, G. C	Ontario Bank
Aird, Jas	Bank of Montreal
Aird, John	Canadian Bank of Commerce
Aitken, J. M	Merchants Bank of Halifax
Aitken, R. A. E	Peoples Bank of Halifax
Allan, Andrew	Halifax Banking Company
Allan, J. E	Union Bank of Halifax
Allan, W. A	Merchants Bank of Canada
Alley, J. A. M	Traders Bank of Canada
Allison, J. Kaye	Bank of British North America
Ambridge, H. A	Molsons Bank
Ambrose, H. S	Bank of Montreal
Ambrose, J. R	Bank of British North America
Anderson, D	Union Bank of Canada
Anderson, E. H	Imperial Bank of Canada
Anderson, F	Merchants Bank of Halifax
Anderson, G. M	Imperial Bank of Canada
Anderson, J	Bank of British North America
Anderson, J	Union Bank of Canada
Anderson, J	Union Bank of Canada
Anderson, M. A	Union Bank of Canada
Anderson, R. H	Bank of Nova Scotia
Anderson, S. P	Bank of Hamilton
Anderson, W. J	Bank of Montreal
Andrews, Ernest	Canadian Bank of Commerce
Andros, E. B	Bank of Toronto
Anglin, T. W	Canadian Bank of Commerce
Angus, A. F	Bank of Montreal
Angus, Jas. A	Bank of Montreal
Appleton, L. E	Molsons Bank
Archibald, H. H	Halifax Banking Company
Arkell, P	Imperial Bank of Canada
Armstrong, C. A	Commercial Bank of Windsor
Armstrong, C. R	Canadian Bank of Commerce
Armstrong, T. E. G	Bank of British North America
Arnaud, E. D	Union Bank of Halifax

Arnaud, F	Merchants Bank of Halifax
Arnaud, H. M	Union Bank of Canada
Arnold, C. M.	Imperial Bank of Canada
Ashe, F. W	Union Bank of Canada
Atkinson, M	Bank of Toronto
Audet, J. B	Banque Nationale
Austin, Benj	Eastern Townships Bank
Austin, H. L. G	Bank of British North America
Babbitt, D. Lee	People's Bank of New Brunswick
Babbitt, G. W	Bank of Nova Scotia
Bailey, A. W	Union Bank of Canada
Bailey, L. W	Bank of British North America
Bain, L. R	Imperial Bank of Canada
Baker, F. S	Imperial Bank of Canada
Baker, P. C	Eastern Townships Bank
Balcer, Leon G	Quebec Bank
Baldwin, J. M	Union Bank of Canada
Balfour, G. H	Union Bank of Canada
Ball, Wm. Lee	Eastern Townships Bank
Banfleld, J. W	Merchants Bank of Halifax
Bangs, John A	Bank of Ottawa
Banks, D. W	Union Bank of Canada
Barber, Manfred	Bank of Hamilton
Barchard, E. H	Merchants Bank of Halifax
Barker, D. J	Bank of Montreal
Barnhardt, R	Molsons Bank
Barnum, J. L	Canadian Bank of Commerce
Barrow, R. S	Union Bank of Canada
Barry, J. F	Merchants Bank of Halifax
Bartlett, C	Bank of Hamilton
Bate, C. F	Merchants Bank of Canada
Bate, E. N	Imperial Bank of Canada
Baxter, W. C	Merchants Bank of Canada
Bayly, N	Bank of British North America
Beauchesne, E	Molsons Bank
Beaumier, H	Banque d'Hochelaga
Begg, E. A	Dominion Bank
Begg, H. T	Bank of Nova Scotia
Begg, Wm. M	Bank of Toronto
Belair, L	Banque Ville Marie
Bell, C. P	Bank of Ottawa
Bell, F. W	Merchants Bank of Canada
Bell, G. J. B	Imperial Bank of Canada
Bell, G. S	Ontario Bank
Bell, J. P	Canadian Bank of Commerce
Bell, J. P	Bank of Hamilton
Bell, W	Imperial Bank of Canada
Bellhouse, G. Y	Bank of British North America
Bellhouse, Wm. A	Merchants Bank of Canada
Belt, H. R	Merchants Bank of Canada
Belt, W. G. H	Bank of British North America
Benedict, C. L	Bank of Montreal

Benson, J, J	Bank of Montreal
Bently, H. L	Union Bank of Halifax
Bergeron, J. D	Banque Ville Marie
Bertrand, E. A	Banque d'Hochelaga
Bethune, F. A	Molsons Bank
Bethune, H. J	Dominion Bank
Biette, F	Western Bank of Canada
Bignell, A. E	Merchants Bank of Canada
Billett, J. Glanville	Union Bank of Canada
Billett, T. R	Canadian Bank Commerce
Billings, C. C	Bank of Ottawa
Billings, J. jr	Bank of Hamilton
Billingsley, F. C	Quebec Bank
Bingay, T. Van B	Exchange Bank of Yarmouth
Bingham, H. P	Merchants Bank of Canada
Birchall, A. S	Merchants Bank of Halifax
Bird, E. H	Canadian Bank of Commerce
Bird, J. Godfrey	Bank of Toronto
Bird, T. A	Bank of Toronto
Bishop, A. G	Merchants Bank of Canada
Black, John	Bank of Nova Scotia
Blagdon, J. F	Merchants Bank of Halifax
Blakeney, H	Merchants Bank of Canada
Blanchard, E. R	Banque de St. Hyacinthe
Bloomfield, F. C	Bank of Montreal
Boddy, W. C	Standard Bank of Canada
Bogert, C. A	Dominion Bank
Bogert, M. S	Dominion Bank
Boire, H. N	Banque d'Hochelaga
Bonner, G. W. G	British Bank of North America.
Borbridge, F	Bank of Ottawa
Borden, F. A	Peoples Bank of Halifax
Borrowman, J. H	Imperial Bank of Canada
Botsford, W. M	Merchants Bank of Halifax
Boulais, J. F	Banque d'Hochelaga
Boultbee, E. K	Imperial Bank of Canada
Boulton, F. J	Union Bank of Canada
Boulton, G. D	Imperial Bank of Canada
Bourdon, F. J	Banque Ville Marie
Bourgoin, J. H	Banque d'Hochelaga
Bourinot, E. W	Union Bank of Canada
Bourne, G. G	Canadian Bank of Commerce
Bowles, Geo	Union Bank of Canada
Boyd, B. C. Barclay	Bank of New Brunswick
Boyer, A	Banque Jacques Cartier
Boyle, J. A	Imperial Bank of Canada
Braithwaite, A. D	Bank of Montreal
Bredin, R. S	Ontario Bank
Breedon H. M	Bank of British North America
Brewer, H. C	Molsons Bank
Brock, H. B	Bank of British North America
Brock, W. F	Merchants Bank of Halifax
Brock, A. E	Merchants Bank of Halifax
Broderick, A. T	Union Bank of Canada

Brodie, F. A ....Bank of Toronto
Brodie, J. K ....Standard Bank of Canada
Brodrick, A. B ....Molsons Bank
Brodrick, P. W. D ....Molsons Bank
Brookes, John ....Bank of British North America
Brough, John M ....Halifax Banking Company
Brough, T. G ....Dominion Bank
Brown, G. C...Imperial Bank of Canada
Brown, Vere C ....Canadian Bank of Commerce
Browne, W. G ....Canadian Bank of Commerce
Bruneau, A ....Banque d'Hochelaga
Brunel, E ....Banque Jacques Cartier
Brydon, James . ...Canadian Bank of Commerce
Brymner, R. T.......................................Canadian Bank of Commerce
Buchan, E..Bank of Hamilton
Buchan, H. E ....Merchants Bank of Canada
Buchan, J. L...Canadian Bank of Commerce
Burchell, John E...................................Merchants Bank of Halifax
Burn, Geo..Bank of Ottawa
Burns, G. H ....Bank of British North America
Burrows, N. R......................................Union Bank of Halifax
Burrows, W. A......................................Merchants Bank of Canada
Butler, W. E..Merchants Bank of Canada
Butt, H. H...Bank of British North America
Butt, R ....Bank of British North America
Butterfield, J..Bank of Hamilton
Byres, G. Martin...................................Ontario Bank

Caldwell, R. B ....Ontario Bank
Caldwell, W ....Bank of Nova Scotia
Cameron, A. W ....Bank of Nova Scotia
Cameron, Duncan ....Merchants Bank of Halifax
Cameron, F. G. D ....Union Bank of Halifax
Cameron, D. A.....................................Canadian Bank of Commerce
Campbell, A. J. D ....Bank of British North America
Campbell, E. A.....................................Bank of Hamilton
Campbell, J. E......................................Banque de St. Hyacinthe
Campbell, J. H......................................Molsons Bank
Campbell, P ....Bank of Toronto
Campbell, Robt. J..................................Bank of Montreal
Cant, Joseph...Bank of British North America
Capreol, A. R ....Imperial Bank of Canada
Carlisle, Thos. ....Molsons Bank
Carmichael F ....Bank of Montreal
Carmichael, J. A. O ....Canadian Bank of Commerce
Carr, Arthur J ....Bank of British North America
Carreau, G. P ....Banque Nationale
Carriere, J..Bank of Ottawa
Carruthers, George ....Merchants Bank of Canada
Carter, E. H...Canadian Bank of Commerce
Carter, J. H ....Canadian Bank of Commerce
Cassels, D. S..Bank of Hamilton
Cassels, L. G..Dominion Bank
Cassels, P ....Imperial Bank of Canada

Cassels, R	Canadian Bank of Commerce
Chadwick, E. A	Imperial Bank of Canada
Chalmers, M. C	Traders Bank of Canada
Chamberlain, A. F	Bank of Ottawa
Champagne, H. A	Banque Jacques Cartier
Chandler, W. M	Canadian Bank of Commerce
Chapman, J. R	Bank of British North America
Charbonneau, A	Banque Jacques Cartier
Charles, D. H	Canadian Bank of Commerce
Chatterton, T. S	Bank of Toronto
Checkley, E. R	Merchants Bank of Canada
Checkley, F. Y	Canadian Bank of Commerce
Chester, A	Merchants Bank of Canada
Chesterton, C. A	Bank of Ottawa
Chipman, W. W. L	Molsons Bank
Chisholm, Geo. R	Merchants Bank of Halifax
Chisholm, T. A	Canadian Bank of Commerce
Chisholm, W. S	Merchants Bank of Canada
Christie, A. E	Union Bank of Canada
Christie, T. N	Union Bank of Canada
Christie, W. J	Bank of Ottawa
Clark, A	Imperial Bank of Canada
Clark, R	Bank of Montreal
Clark, R. S	Imperial Bank of Canada
Clarke, C. H. Stanley	Imperial Bank of Canada
Clawson, J	Bank of New Brunswick
Clement, A	Banque Nationale
Clinch, C. W	Molsons Bank
Clouston, E. S	Bank of Montreal
Clouston, W. S	Bank of Montreal
Clowes, F. J	Canadian Bank of Commerce
Cochran, E. J	People's Bank of Halifax
Codd, Selby	Bank of Ottawa
Coffin, T. C	Quebec Bank
Cole, Francis	Bank of Ottawa
Coleman, H. J	Traders Bank of Canada
Collard, W. H	Imperial Bank of Canada
Comte, A	Banque Ville Marie
Connally, W. S	Molsons Bank
Conolly, R. G. W	Canadian Bank of Commerce
Constantineau, O	Banque Ville Marie
Cook, C	Standard Bank of Canada
Cooke, C. H. S	Merchants Bank of Canada
Cooke, Wm	Merchants Bank of Canada
Cooke, W. A	Canadian Bank of Commerce
Coombs, E. G	People's Bank of Halifax
Cooper, W. F	Bank of Toronto
Cooper, W. J	Merchants Bank of Canada
Copeland, W. A	Bank of Toronto
Cosby, N. W	Imperial Bank of Canada
Côté, J. E	Banque Nationale
Cotton, F. C	Merchants Bank of Halifax
Couét, A. E	Banque Nationale
Couét, L	Banque Nationale

Coulson, D	Bank of Toronto
Coulthard, W. B	People's Bank of New Brunswick
Cowan, R. L	Canadian Bank of Commerce
Cowdry, E	Canadian Bank of Commerce
Cowie, A. G	Bank of British North America
Craig, H. J	Western Bank of Canada
Craig, F. L	Imperial Bank of Canada
Craig, Will	Bank of Toronto
Cran, J	Bank of British North America
Crane, John	Ontario Bank
Crawford, F. L	Canadian Bank of Commerce
Creelman, A	Imperial Bank of Canada
Creighton, A. S	Union Bank of Halifax
Creighton, J. S	People's Bank of Halifax
Crispo, F. W. S	Union Bank of Canada
Crombie, A. M	Canadian Bank of Commerce
Crombie, D. B	Quebec Bank
Crombie, R. B	Bank of Montreal
Crompton, R. W	Canadian Bank of Commerce
Cronyn, Frank E	Molsons Bank
Crosbie, C. A	Merchants Bank of Halifax
Cross, F. O	Canadian Bank of Commerce
Cross, Lionel F	Canadian Bank of Commerce
Crossley, F	Canadian Bank of Commerce
Crowdy, W. H	Merchants Bank of Halifax
Cruthers, S	Union Bank of Canada
Cumberland, C. R	Bank of British North America
Cumberland, D	Bank of British North America
Currie, A. E	Bank of British Columbia
Currie, R. S	Merchants Bank of Halifax
Cuthbertson, G. J	Bank of Toronto
Daly, Simcoe M	Canadian Bank of Commerce
Dampier, L. H	Canadian Bank of Commerce
Daniel, G. W	Bank of Nova Scotia
Daniels, Fred	Bank of Montreal
D'Artois, H	Banque Ville Marie
Davidson, H. R	Bank of British Columbia
Davidson, R., jr	Imperial Bank of Canada
Davis, R. B	Bank of Hamilton
Davis, R. G	Ontario Bank
Deacon, C. F	Bank of British North America
Deacon, F. B	Canadian Bank of Commerce
Deans, C. D	Merchants Bank of Canada
Deans, H. G. P	Bank of British North America
DeGuise, L	Banque Nationale
Delmage, A. C. E	Merchants Bank of Canada
DeMille, F. W	Halifax Banking Company
Denison, E. S	Imperial Bank of Canada
Dennison, E. O	Union Bank of Canada
De Veber, Boies	Halifax Banking Company
Dewar, D. B	Canadian Bank of Commerce
Dewdney, E. E. L	Bank of Montreal
Dick, John M	Bank of New Brunwick

Dick, William	Bank of Montreal
Dickie, M	Merchants Bank of Halifax
Dickins, A. H	Bank of Ottawa
Dickinson, H. S	Bank of Toronto
Dickinson, Wm	Merchants Bank of Halifax
Dimock, R. V	Merchants Bank of Halifax
Dixon, F. J	Bank of British North America
Dodge, L. A	Commercial Bank of Windsor
Dorion, H	Banque Jacques Cartier
Dorval, N	Banque Ville Marie
Douglas, Geo. H	Imperial Bank of Canada
Dowler, C. E. A	Canadian Bank of Commerce
Downie, D. H	Canadian Bank of Commerce
Draper, W. H	Molsons Bank
Dromgole, E. R	Merchants Bank of Canada
Drouin, L	Banque Nationale
Duff, J. M	Canadian Bank of Commerce
Dufresne, J. M	Banque Nationale
Dumoulin, P. B	Molsons Bank
Duncan, D. H	Merchants Bank of Halifax
Duncan, J. F	Canadian Bank of Commerce
Dunlop, Fred	Molsons Bank
Dunn, E. E	Bank of Toronto
Dunnet, A. G	Bank of Ottawa
Dunsford, C. R	Union Bank of Canada
Dunsford, W. H	Canadian Bank of Commerce
Dupuy, H. S	Bank of Montreal
Durnford, A. D	Molsons Bank
Dusault, J. H	Banque Nationale
Duthie, E	Bank of Montreal
Dykes, P	Merchants Bank of Canada
Earle, Ernest A	Merchants Bank of Halifax
Easson, C. H	Bank of Nova Scotia
Easton, Geo. C	Imperial Bank of Canada
Eckardt, H. M. P	Merchants Bank of Canada
Eddis, J. H	Imperial Bank of Canada
Edwards, J. B	Bank of Toronto
Eliot, W. L	Bank of Montreal
Elliott, H. C	Bank of Ottawa
Elliot, James	Molsons Bank
Elliott, John	Standard Bank of Canada
Elliot, R	Molsons Bank
Elliot, R. W	Union Bank of Halifax
Ellis, A. E	Bank of British North America
Ellis, Robt. L	Bank of British North America
Elmsley, J	Bank of British North America
Embury, W	Merchants Bank of Canada
Ervin, Chas. K	Merchants Bank of Halifax
Evans, H. P. W	Molsons Bank
Falconbridge, J. D	Imperial Bank of Canada
Farwell, Wm	Eastern Townships Bank
Faucher, J. D	Quebec Bank

Fauquier, F. B	Imperial Bank of Canada
Fee, Jas. L	Bank of Toronto
Ferguson, B. T	Bank of Toronto
Ferguson, D. A	Molsons Bank
Ferguson, J. H	Merchants Bank of Halifax
Fewings, E. J	Merchants Bank of Canada
Fidler, J. E	Molsons Bank
Finnie, D. M	Bank of Ottawa
Finnis, Chas	Bank of British North America
Finucane, F. J	Bank of Montreal
Fisher, Guy A	Union Bank of Canada
Fisher, Henry G	Bank of Montreal
Fisher, W. H	Canadian Bank of Commerce
Fitton, H. W	Canadian Bank of Commerce
Flemming, H. A	Bank of Nova Scotia
Forbes, D. J	Halifax Banking Company
Ford, R. O	Imperial Bank of Canada
Forrest, C	Imperial Bank of Canada
Forrest, H. F	Union Bank of Canada
Forrest, S. L	Bank of Ottawa
Forrest, W. W	Bank of Ottawa
Forrester, R. W	Merchants Bank of Halifax
Forsayeth, B	Bank of Hamilton
Forster, J. A	Imperial Bank of Canada
Fortier, S	Banque d' Hochelaga
Foster, G. C	Imperial Bank of Canada
Foster, R. P	Merchants Bank of Canada
Fothergill, C	Bank of Montreal
Fowler, E. B	Bank of Toronto
Fox, Chas. J	Western Bank of Canada
Fox, Earnest A	Canadian Bank of Commerce
Francis, B. B. O	Imperial Bank of Canada
Francis, F. B	Canadian Bank of Commerce
Fraser, A. C	Merchants Bank of Canada
Fraser, Hector	Bank of Ottawa
Freeman, C. D	Bank of Nova Scotia
Frost, Henry	Banque Ville Marie
Fry, A. G	Bank of British North America
Fuller, E. H	Bank of Toronto
Fulton, J. W	Merchants Bank of Halifax
Fulton, R. H	Merchants Bank of Halifax
Fysche, Thos	Merchants Bank of Canada
Gaboury, W	Banque d'Hochelaga
Galbraith, R. L	Imperial Bank of Canada
Galletly, A. J. C	Bank of Montreal
Galloway, J. J	Merchants Bank of Canada
Gardiner, H. J	Merchants Bank of Halifax
Gariepy, R	Banque Ville Marie
Garter, B. B	Union Bank of Canada
Gates, R. S	Union Bank of Halifax
Gauthier, J. N	Banque de St. Jean
Geddes, H. M	Molsons Bank
Gerrard, Geo. B	Bank of British North America

Gibb, J. S ....Imperial Bank of Canada
Gibbs, G. M..............................Canadian Bank of Commerce
Gibson, W. L..............................Canadian Bank of Commerce
Gilbert, M. A..............................Imperial Bank of Canada
Gill, Robert ....Canadian Bank of Commerce
Gillard, J. H..............................Bank of British North America
Gilleland, L. J ....Traders Bank of Canada
Gillespie, G ....Bank of British Columbia
Giroux, C. A..............................Banque d'Hochelaga
Girvan, Samuel..............................Bank of New Brunswick
Glennie, G. G ....Bank of Nova Scotia
Godfrey, W ....Bank British North America
Godwin, C. B..............................Quebec Bank
Godwin, F. R..............................Bank of Ottawa
Gomery, B. V..............................Molsons Bank
Gordon, J. S ....Bank of Hamilton
Gordon, T. A. G ....Molsons Bank
Gosling, F. J..............................Bank of Hamilton
Gould, R. J ....Bank of Toronto
Gowdy, A. B..............................Traders Bank of Canada
Gower, E. P ....Canadian Bank of Commerce
Graecen, W. H..............................Imperial Bank of Canada
Graham, Percy..............................Peoples Bank of Halifax
Graham, S. R..... .... Molsons Bank
Grasett, H. J..............................Ontario Bank
Gray, C. A..............................Union Bank of Halifax
Gray, D. M..............................Merchants Bank of Canada
Gray, Fred. H ....Standard Bank of Canada
Gray, H. A..............................Bank of Hamilton
Gray, H. M ....Bank of Montreal
Gray, J. E ....Standard Bank of Canada
Gray, V. G..............................Bank of British North America
Gray, W. S..............................Dominion Bank
Greata, J. M..............................Bank of Montreal
Green, A. R ....Imperial Bank of Canada
Green, Herbert..............................
Green, J. Bertram ....Bank of British Columbia
Greenhill, G. V. J..............................Merchants Bank of Canada
Gresley, N. B ....Bank of British North America
Griffin, F. F ....Bank of Ottawa
Griffin, Geo. H..............................Bank of Montreal
Grindley, H. S ....Bank of British North America
Groff, H. H..............................Molsons Bank
Grubbe, E. H ....Bank of Montreal
Grubbe, R. W.................... ....Bank of Toronto

Haberer, Eug ....Molsons Bank
Hagerman, A. E ....Ontario Bank
Hague, F..............................Merchants Bank of Canada
Hague, Geo ....Merchants Bank of Canada
Hague, Geo. E..............................Merchants Bank of Canada
Hahn, F. X ....Merchants Bank of Canada
Haines, H ....Bank of British Columbia
Hale, Jeffery.............................. . Canadian Bank of Commercc

Hall, A. S	Bank of British North America
Hall, H. E	Bank of New Brunswick
Hall, P. G	Merchants Bank of Halifax
Hall, T. G	Bank of British North America
Halls, F. E	People's Bank of Halifax
Halstead, A. G	Merchants Bank of Canada
Hamel, J	Banque d'Hochelaga
Hamilton, A. L	Canadian Bank of Commerce
Hamilton, J. W	Bank of British North America
Hamilton, R. M	Bank of Montreal
Harcourt, J. L	Canadian Bank of Commerce
Hargraft, E. W	Bank of Toronto
Hargrave, W. H	Eastern Townships Bank
Harman, G. H	Bank of Montreal
Harper, C. G	Merchants Bank of Canada
Harper, J. F	Bank of Hamilton
Harries, H. A	Molsons Bank
Harris, C. E	Merchants Bank of Halifax
Harris, F. St. C	Union Bank of Halifax
Harris, R. W. D	Bank of British North America
Harrison, R. M	Union Bank of Canada
Harrison, S. L. T	Merchants Bank of Halifax
Harrison, T. S	Canadian Bank of Commerce
Harrison, W. H	Halifax Banking Company
Harshaw, W. B	Merchants Bank of Canada
Hart, M. C	Bank of Hamilton
Hart, W. D	Standard Bank of Canada
Harvey, H. A.	Bank of British North America
Harvey, W. C	Union Bank of Halifax
Harwood, Chas. DeV	Quebec Bank
Hatfield, C. E	Molsons Bank
Haun, A. W	Bank of Hamilton
Hawkins, G. N. C	People's Bank of Halifax
Hawley, C. W	Eastern Townships Bank
Hay, E	Imperial Bank of Canada
Hazen, A. P	Bank of British North America
Hearn, A. R. B	Imperial Bank of Canada
Hebblewhite, W. A	Imperial Bank of Canada
Hebert, J. B	Banque Jacques Cartier
Hedley, J. M	Canadian Bank of Commerce
Helm, W. J	Bank of Toronto
Helsby, E. C	People's Bank of Halifax
Henderson, G. A	Bank of Montreal
Henderson, Joseph	Bank of Toronto
Henderson, W. T	Imperial Bank of Canada
Henwood, H. B	Bank of Toronto
Heron, V. W. S	Canadian Bank of Commerce
Herring, B. A	Bank of Ottawa
Hespeler, Jacob	Molsons Bank
Hettle, H. W	Union Bank of Canada
Heward, E. H	Merchants Bank of Canada
Hilborn, W	Canadian Bank of Commerce
Hill, E. W. R	Molsons Bank
Hill, G. N. T	Canadian Bank of Commerce

Hill, G. W	Merchants Bank of Canada
Hill, J. F. H	Merchants Bank of Canada
Hill, T. S	Dominion Bank
Hillary, Norman	Traders Bank of Canada
Hinds, W. G	Merchants Bank of Canada
Hoare, C. S	Imperial Bank of Canada
Hodder, M. S	Merchants Bank of Canada
Hodgetts, G. W	Bank of Toronto
Hodgetts, Thos	Bank of Toronto
Hodgins, E. S	Canadian Bank of Commerce
Hodson, G. C	Union Bank of Halifax
Hogg, W. jr	Canadian Bank of Commerce
Hogg, W. J	Bank of Montreal
Holden, M. E	Dominion Bank
Holland, G. A	Canadian Bank of Commerce
Holland, H. F	Bank of Toronto
Hollyer, A. J	Bank of Montreal
Holmested, F. W	Canadian Bank of Commerce
Holt, A. E	Bank of Montreal
Holt, Grange V	Bank of British Columbia
Hood, John	Bank of Ottawa
Hood, J. D	Imperial Bank of Canada
Hope, F	Bank of British North America
Hopkins, H., jr	Bank of Toronto
Hopkirk, F. B	Bank of Ottawa
Horne, G. H	Canadian Bank of Commerce
Hornsby, O. A	Merchants Bank of Halifax
Houseman, J. E	Molsons Bank
Houston, E. S	Imperial Bank of Canada
Houston, H. C	Imperial Bank of Canada
Houston, W. R	Dominion Bank
Howard, G. V. W	Canadian Bank of Commerce
Howard, Geo. W	Merchants Bank of Canada
Howard, H	Ontario Bank
Hubbell, J. L	Canadian Bank of Commerce
Hughes, F. S	Imperial Bank of Canada
Hunt, J. S	Molsons Bank
Hunter, E. P	Quebec Bank
Hunter, F. J	Bank of Montreal
Hurdon, N. D	Molsons Bank
Hutcheson, S. M	Western Bank of Canada
Hutchinson, F. W	Canadian Bank of Commerce
Hutchison, H. G	Western Bank of Canada
Imrie, J	Bank of Nova Scotia
Inglis, John	Merchants Bank of Canada
Inglis, R	Bank of British North America
Ireland, A. H	Canadian Bank of Commerce
Irvine, J. H	Bank of Ottawa
Irwin, J	Bank of British North America
Jackson, A. E. P	Canadian Bank of Commerce
Jackson, E. C	Traders Bank of Canada
Jaffray, H. T	Imperial Bank of Canada

James, Victor C	Merchants Bank of Canada
Jardine, J. Walter	Bank of Nova Scotia
Jarvis, Arthur S	Union Bank of Canada
Jarvis, Edgar R	Canadian Bank of Commerce
Jarvis, E. W	Bank of Montreal
Jarvis, F. P	Imperial Bank of Canada
Jarvis, F. S	Merchants Bank of Canada
Jarvis, Gerald	Bank of Ottawa
Jarvis, S. J	Bank of Montreal
Jemmett, F	Merchants Bank of Canada
Jemmett, F. G	Canadian Bank of Commerce
Jemmett, H	Canadian Bank of Commerce
Jennings, B	Imperial Bank of Canada
Jennings, J. B	Western Bank of Canada
Jennings, R. C	Canadian Bank of Commerce
Johnson, F. W. G	Molsons Bank
Johnston, Geo. S	Bank of Toronto
Johnston, J. M	Quebec Bank
Johns, T. W	Bank of Yarmouth
Jones, A. F. H	Traders Bank of Canada
Jones, E. C	Bank of Montreal
Jones, G. W	Standard Bank of Canada
Jones, H. V. F	Canadian Bank of Commerce
Jones, R. L. Y	Quebec Bank
Jones, Stephen L	Dominion Bank
Jones, T. Roy	Bank of Nova Scotia
Joy, B. H	Merchants Bank of Canada
Jubin, H. W	Union Bank of Halifax
Jukes, A	Imperial Bank of Canada
Kains, A	Canadian Bank of Commerce
Kains, J. M	Imperial Bank of Canada
Kane, P. H	Bank of Ottawa
Kavanagh, C. R	Bank of Ottawa
Kay, E. J	Imperial Bank of Canada
Kay, John	Canadian Bank of Commerce
Kelly, J	Standard Bank of Canada
Kelly, J. E	Merchants Bank of Canada
Kelso, H. M	Ontario Bank
Kemp, Donald	Merchants Bank of Halifax
Kemp, J. A. C	Canadian Bank of Commerce
Kemp, J. C	Canadian Bank of Commerce
Kennedy, C. A	Bank of Nova Scotia
Kenny, C. H	Bank of Ottawa
Kenny, L. F	Merchants Bank of Halifax
Kenrich, O. E	Canadian Bank of Commerce
Kessen, Blaikie R	Bank of Ottawa
Ketchum, C. V	Bank of Toronto
Kilgour, W. A	Canadian Bank of Commerce
Killaly, R. H	Molsons Bank
Kilvert, F. E., jr	Bank of Hamilton
Kimball, F. E	Bank of Toronto
King, W. C. J	Canadian Bank of Commerce
Kingsford, G. E	Dominion Bank

Kirkland, Angus	Bank of Montreal
Kirkpatrick, G. R. F	Imperial Bank of Canada
Kirkpatrick, Wm. R	Merchants Bank of Halifax
Kirkwood, T	Bank of British North America
Knight, A. S	Bank of Nova Scotia
Kohl, E. F	Molsons Bank
Kortwright, E. A	Bank of Toronto
Kydd, Geo	Merchants Bank of Halifax
Labadie, P. A	Banque Nationale
Laberge, C. J	Merchants Bank of Canada
Lacasse, J. F	Banque Jacques Cartier
Laframboise, J	Eastern Townships Bank
Lafrance, P. G	Banque Nationale
Laing, G. F	Bank of British North America
Laing, R. T	Canadian Bank of Commerce
Laird, Alex	Canadian Bank of Commerce
Laird, D. R	Bank of Nova Scotia
Lalby, C. T	Imperial Bank of Canada
Lamb, J. R	Bank of Toronto
Lamont, Malcolm	Bank of British Columbia
Lamontaigne, E	Quebec Bank
Langmuir, J. A	Imperial Bank of Canada
Larke, C	Standard Band of Canada
Larose, Maurice	Quebec Bank
Latimer, C. R	Bank of Toronto
Lavoie, C	Banque Nationale
Lavoie, N	Banque Nationale
Lawson, A. E	Commercial Bank of Windsor
Lawson, Reginald	Bank of Nova Scotia
Lawson, Walter	Commercial Bank of Windsor
Lay, Harry M	Canadian Bank of Commerce
Lay, J. M	Imperial Bank of Canada
Leach, Hugh	
Leavitt, J. D	Union Bank of Halifax
LeDoux, A. O	Eastern Townships Bank
Leduc, F. G	Banque d'Hochelaga
Leduc, L. Z	Banque Jacques Cartier
Lefebvre, J. H	Banque Ville Marie
Lefroy, A. B	Bank of Toronto
Lefroy, A. G	Imperial Bank of Canada
Legault, O. W	Banque Ville Marie
Lemaire, A. E	Merchants Bank of Canada
Le Mesurier, G. G	Imperial Bank of Canada
Lemieux, J	Banque Jacques Cartier
Leslie, A	Bank of British North America
Leslie, N. G	Banque d'Hochelaga
Leslie, J	Bank of Montreal
Lessard, C	Banque Ville Marie
Lewis, Norman F	Merchants Bank of Halifax
Lewis, C. A	Merchants Bank of Canada
Lewis, J. D	Imperial Bank of Canada
Lindsay, J. K	Bank of British North America
Lister, F. A. W	Merchants Bank of Canada

Lithgow, J. C	Merchants Bank of Halifax
Little, A. F	Union Bank of Halifax
Livingstone, J. S	Merchants Bank of Canada
Lloyd, C. H	Ontario Bank
Lobb, W. A	Bank of British Columbia
Lockwood, H	Bank of Montreal
Lockwood, H	Molsons Bank
Logan, A. H	Bank of Ottawa
Logan, F. W	Canadian Bank of Commerce
Lombard, J. H	Bank of Nova Scotia
Loosemore, H. H	Standard Bank of Canada
Louchs, H. E	Merchants Bank of Canada
Lounsbrough, H. T	Imperial Bank of Canada
Love, C. A	Imperial Bank of Canada
Low, A	Union Bank of Canada
Low, H. Ryland	Molsons Bank
Lugsdin, W. H	Canadian Bank of Commerce
Luxton, A. G. H	Bank of Hamilton
Lyde, Geo	Halifax Banking Company
Lyon, R. A	Imperial Bank of Canada
Lytle, H. J	Ontario Bank
Macbeth, F	Molsons Bank
MacCallum, A	Bank of British North America
Macdonald, Jno	Bank of British North America
Macdonald, R. H	People's Bank of Halifax
Macdonald, A. J	Ontario Bank
MacGachen, A. F. D	Bank of Montreal
MacGachen, F. L	Merchants Bank of Canada
MacGillivray, D	Canadian Bank of Commerce
MacGowan, W. J	Merchants Bank of Canada
MacHaffie, L. G	Bank of British North America
Machaffie, W. A	Merchants Bank of Canada
MacKenzie, A. H. B	Canadian Bank of Commerce
MacKenzie, C. E	Merchants Bank of Halifax
MacKenzie, G. H	Merchants Bank of Halifax
MacKenzie, G. P	Bank of British North America
MacKenzie, H. B	Bank of British North America
MacKenzie, J. M	Imperial Bank of Canada
Mackinnon, Jas	Eastern Townships Bank
Mackintosh, A. St. L	Merchants Bank of Canada
Mackintosh, C. D	Canadian Bank of Commerce
MacMillan, D. A	Merchants Bank of Canada
MacNamara, D	Bank of Ottawa
Macnider, A	Bank of Montreal
Macnutt, E. A	Merchants Bank of Halifax
Macpherson, R. C	Canadian Bank of Commerce
McBrine, J. H	Bank of Toronto
McCaffry, Thos. F	Union Bank of Canada
McCarroll, Jas	Halifax Banking Company
McCleneghan, A. B	Imperial Bank of Canada
McClintock, E. S. V	Bank of Montreal
McCosh, R. G	Canadian Bank of Commerce
McCurdy, E. A	Merchants Bank of Halifax

McCurdy, D. A	Halifax Banking Company
McCurdy, F. B	Halifax Banking Company
McDonald, Arthur	Bank of New Brunswick
McDonald, W	Union Bank of Halifax
McDougall, Allan	Quebec Bank
McDougall, F	Merchants Bank of Halifax
McDougall, H. H	Merchants Bank of Halifax
McDougall, Thomas	Quebec Bank
McGill, C	Ontario Bank
McGill, V. C	Ontario Bank
McGillivray, A	Bank of Toronto
McGregor, D	Canadian Bank of Commerce
McGuire, W	Imperial Bank of Canada
McHarrie, R. C	Canadian Bank of Commerce
McInnes, D	Banque d'Hochelaga
McIntosh, J. M	Dominion Bank
McIsaac, John A	Merchants Bank of Halifax
McKay, G. B	Bank of Toronto
McKeand, D. L	Bank of Hamilton
McKee, G. W	Canadian Bank of Commerce
McKeen, John	Bank of Nova Scotia
McLaren, D	Bank of Ottawa
McLaren, H	Bank of Hamilton
McLaggan, C. E	Union Bank of Halifax
McLean, A. D	Merchants Bank of Canada
McLellan, W. A	Bank of British North America
McLennan, D	Canadian Bank of Commerce
McLeod, J. A	Bank of Nova Scotia
McLimont, R	Merchants Bank of Canada
McMahon, H. P	Traders Bank of Canada
McMahon, J	Molsons Bank
McMaster, T. G	Canadian Bank of Commerce
McMichael, H. M	Bank of British North America
McMullen, E. W	Merchants Bank of Canada
McMurray, L. S	Bank of Toronto
McNeil, R. S	Bank of Nova Scotia
McQuaid, J. H	Merchants Bank of P.E.I.
McRae, A. D	Union Bank of Halifax
McVity, H. H	Canadian Bank of Commerce
Mabon, E. J	Bank of Nova Scotia
Mabon, S. W	Bank of Nova Scotia
Macoun, F. J	Canadian Bank of Commerce
Magee, J. E	Merchants Bank of Canada
Magee, T. W	Halifax Banking Company
Mair, Geo	Traders Bank of Canada
Malpas, F. C	Bank of British Columbia
Manager	Union Bank of Canada
Mann, F. A	Merchants Bank of Canada
Manson, Wm	Canadian Bank of Commerce
Marchand, A	Molsons Bank
Margetts, P	Bank of British North America
Marler, W. L	Merchants Bank of Canada
Marquis, H. G	Bank of British North America
Marsh, F. H	Imperial Bank of Canada

Marsland, C. B	Molsons Bank
Martin, James	Bank of Ottawa
Massay, George	Bank of Montreal
Massey, F. V	Bank of Ottawa
Massey, W. M	Bank of British North America
Mathewson, F. H	Canadian Bank of Commerce
Mathewson, W. H	Canadian Bank of Commerce
Maybee, A	Canadian Bank of Commerce
Maynard, Wm.	Canadian Bank of Commerce
Mayraud, H. W	Merchants Bank of Halifax
Meldrum, W. A	Merchants Bank of Canada
Mellish, A. E	Merchants Bank of Halifax
Merrett, T. E	Merchants Bank of Canada
Metzler, R. H	Halifax Banking Company
Meynell, W. B	Merchants Bank of Halifax
Michie, G. W	Union Bank of Canada
Middleton, W. E	Ontario Bank
Miller, D	Merchants Bank of Canada
Miller, G. A	Merchants Bank of Canada
Millidge, J. J	Union Bank of Canada
Minty, F. C. G	Canadian Bank of Commerce
Minty, H. I	Canadian Bank of Commerce
Mitchell, J. H	Bank of Ottawa
Mitchell, W. F	Merchants Bank of Halifax
Mockridge, James	Bank of Toronto
Moffat, W	Imperial Bank of Canada
Moles, G. H	Bank of Ottawa
Molson, A. E	Union Bank of Canada
Molson, J. D	Molsons Bank
Monk, John Benning	Bank of Ottawa
Montgomery, R. J	Canadian Bank of Commerce
Montizambert, A	Bank of Montreal
Mooney, Andrew	Bank of Nova Scotia
Moore, C	Bank of British North America
Moore, E. A	Bank of Montreal
Moore, G. S	Bank of Nova Scotia
Moorman, J	Halifax Banking Company
Morden, H. J	Standard Bank of Canada
More, John C	Merchants Bank of Canada
Moreau, W. A	Banque de St. Hyacinthe
Moreault, J. F	Banque Jacques Cartier
Morehouse, W. E	Eastern Townships Bank
Morey, S F	Eastern Townships Bank
Morgan, C. G	Merchants Bank of Canada
Morgan, H. H	Imperial Bank of Canada
Morris, E	Ontario Bank
Morris, H. H	Canadian Bank of Commerce
Morris, J	Ontario Bank
Morris, M	Canadian Bank of Commerce
Morris, M	Imperial Bank of Canada
Morrison, J. H	Halifax Banking Company
Morrison, J. J	Bank of British North America
Morrison, P. W	Merchants Bank of Halifax
Morrison, R. P	Halifax Banking Company

Morson, W. C. T	Canadian Bank of Commerce
Morton, C. E	Merchants Bank of Canada
Morton, W. D	Bank of Toronto
Moseley, Oswald	Bank of British North America
Mosher, H. E	Commercial Bank of Windsor
Moss, G. F	Imperial Bank of Canada
Motherwell, J. A	Canadian Bank of Commerce
Mowat, John	Bank of Nova Scotia
Moyle, J. R	Bank of British North America
Muckleston, A. J	Canadian Bank of Commerce
Munro, A. D	Bank of Nova Scotia
Munro, Geo	Merchants Bank of Canada
Munro, Geo. W	People's Bank of Halifax
Munro, J. S	Bank of British Columbia
Murray, A. H	Imperial Bank of Canada
Murray, F. L	Merchants Bank of Halifax
Murray, H. S	Merchants Bank of Halifax
Murray, J. F	Canadian Bank of Commerce
Murray, J. McE	Canadian Bank of Commerce
Murray, William	Bank of British Columbia
Mussen, R. T	Canadian Bank of Commerce
Naftel, F. J	Bank of Montreal
Nash, A. E	Bank of Montreal
Nasmith, H. C	Canadian Bank of Commerce
Nasmith, S. J	Imperial Bank of Canada
Naylor, W. S	Molsons Bank
Neeve, J. H	Bank of Ottawa
Neill, C. E	Merchants Bank of Halifax
Nesbitt, H. W	Merchants Bank of Canada
Niblett, E. R	Bank of Hamilton
Nicoll, J. C	Bank of British North America
Noble, C. J	Canadian Bank of Commerce
Normand, L. J	Banque Ville Marie
Norsworthy, S. C	Bank of Montreal
Nourse, C. G. K	Canadian Bank of Commerce
Nowers, W. H	Merchants Bank of Canada
Nunns, A. L	Imperial Bank of Canada
O'Grady, F. G	Merchants Bank of Canada
O'Grady, G. deC	Canadian Bank of Commerce
O'Grady, J. W. deC	Bank of Montreal
O'Halloran, J. M	Eastern Townships Bank
Oliver, D. B	Union Bank of Canada
Oliver, F. G	Merchants Bank of Canada
Oliver, W. T	Bank of British North America
Olivier, E. P	Eastern Townships Bank
Ord, A. B	Traders Bank of Canada
O'Reilly H. H	Bank of Hamilton
O'Reilly, H. R	Canadian Bank of Commerce
Osborne, A. C	Ontario Bank
Osler, D. F	Imperial Bank of Canada
Owen, L. C	Bank of Ottawa
Owens, C. W	Western Bank of Canada

Paddon, J. A	Bank of Montreal
Palmer, A. L	Imperial Bank of Canada
Pangman, H. G	Canadian Bank of Commerce
Paquin, S. Z	Merchants Bank of Canada
Pardee, G. C	Bank of Montreal
Parker, A. D	Canadian Bank of Commerce
Parker, E. G	Bank of Ottawa
Parker, F. A	Merchants Bank of Canada
Parker, W. D	Ontario Bank
Parkes, G. E	Bank of British Columbia
Parkes, T. G. A	Merchants Bank of Halifax
Parsons, H. B	Canadian Bank of Commerce
Pashby, R	Bank of Toronto
Pashley, F. W	Molsons Bank
Paterson, N	Imperial Bank of Canada
Paterson, T. H	Bank of British Columbia
Paterson, R. W	Bank of Ottawa
Patterson, A. B	Merchants Bank of Canada
Patterson, C. A	Bank of Hamilton
Patterson, G. M	Canadian Bank of Commerce
Patterson, E. L. Stewart	Eastern Townships Bank
Patton, F. L	Dominion Bank
Patton, R. C	Quebec Bank
Pearce, W. A	Dominion Bank
Pearce, W. K	Dominion Bank
Pearson, C. R. W	Union Bank
Pease, Edson L	Merchants Bank of Halifax
Peden, G. R	Bank of Ottawa
Pegram, W. H	Bank of British Columbia
Pemberton, G. C. T	Canadian Bank of Commerce
Pennington, Wm. J. G	Bank of British North America
Pennock, C. G	Bank of Ottawa
Pennock, H. C	Bank of Ottawa
Pepin, A	Banque Ville Marie
Pepler, A	Dominion Bank
Percival, W. F	Bank of Toronto
Peterson, F. J	Imperial Bank of Canada
Pethick, H. S	Bank of Nova Scotia
Phepoe, T. B	Molsons Bank
Philip, W	Imperial Bank of Canada
Phillips, E. S	Merchants Bank of Canada
Philpot, F. V	Imperial Bank of Canada
Phillpotts, W. E	Bank of British North America
Phipps, A. E	Imperial Bank of Canada
Phipps, A. R	Canadian Bank of Commerce
Pidcock, C. S	Union Bank of Canada
Pinkham, J	Imperial Bank of Canada
Pitblado, C. B	Imperial Bank of Canada
Pitblado, J	Bank of Nova Scotia
Pitt, Edward	Bank of Montreal
Playter, E. M	Canadian Bank of Commerce
Plummer, J. H	
Polson, Hugh	Canadian Bank of Commerce
Pool, John	Traders Bank of Canada

Pope. Frank H....................Ontario Bank
Porter, H. A.......................Merchants Bank of Halifax
Porter, Jas. S......................Bank of Toronto
Pottenger, F. W..................Merchants Bank of Canada
Pottenger, John..................Merchants Bank of Canada
Pousette, A. C. P.................Bank of Toronto
Powell, Carlos S.................Quebec Bank
Power, E. V.......................Bank of Ottawa
Pratt, Edward C..................Molsons Bank
Pratt, W. H.......................Molsons Bank
Prendergast, M. J. A.............Banque d'Hochelaga
Pringle, A. D......................Merchants Bank of Canada
Pringle, John......................Bank of Toronto
Pringle, W..........................Merchants Bank of Canada
Proctor, J. R.......................Union Bank of Canada
Ptolemy, D. A. P.................Bank of Ottawa
Pugh, Henry J....................Union Bank of Canada
Putnam, Arthur G...............Merchants Bank of Halifax

Racey, E. F.......................Bank of British North America
Radcliffe, D. A....................Ontario Bank
Rae, H. C..........................Canadian Bank of Commerce
Ramsden, F. G....................Bank of Toronto
Rapsey, W. J......................Ontario Bank
Ratz, D. D.........................Traders Bank of Canada
Raymond, S. D...................Imperial Bank of Canada
Raynes, H. F.....................Union Bank of Canada
Read, Chas. N....................Merchants Bank of Canada
Read, H. L........................Merchants Bank of Canada
Read, L. B........................Merchants Bank of Halifax
Reade, C. W......................Imperial Bank of Canada
Reesor, J. D......................Standard Bank of Canada
Reeve, R. F.......................Bank of Montreal
Reid, B. L..........................Canadian Bank of Commerce
Reid, E. R..........................Commercial Bank of Windsor
Reid, Geo. P......................Standard Bank of Canada
Reid, H. L..........................Imperial Bank of Canada
Reikie, K. W.......................Canadian Bank of Commerce
Reynolds, W. P..................Molsons Bank
Rhodes, W. C.....................Molsons Bank
Rice, O. F..........................Imperial Bank of Canada
Richardson, J. A.................Imperial Bank of Canada
Richardson, M. A...............Imperial Bank of Canada
Richey, M. S. L..................Bank of Montreal
Ridout, A. H.......................Bank of Hamilton
Ridout, A. W.....................Canadian Bank of Commerce
Ridout, H. E.......................Imperial Bank of Canada
Rimington, S. B.................Molsons Bank
Rintoul, R..........................Bank of Montreal
Riopel, D. P.......................Banque Ville Marie
Robarts, A. W....................Canadian Bank of Commerce
Robarts, E. C.....................Imperial Bank of Canada
Roberts, J. P......................Bank of British North America
Roberts, Wm......................Canadian Bank of Commerce

Robertson, A........................Bank of Nova Scotia
Robertson, Blair ....Bank of Nova Scotia
Robertson, David...................Bank of Ottawa
Robertson, F. O ....Union Bank of Halifax
Robertson, W. J ....Canadian Bank of Commerce
Robinson, Edwd. N................Eastern Townships Bank
Robinson, F. M ....Bank of Hamilton
Robinson, H. B ....Bank of Montreal
Robinson, J. A....................
Robinson, P. C....................Bank of Nova Scotia
Robinson, R. A....................Bank of British North America
Robinson, Wm. H ....Eastern Townships Bank
Robitaille, G. S. F ....Quebec Bank
Ross, C. A.........................
Ross, C. G.........................Ontario Bank
Ross, F. J ....Merchants Bank of Canada
Ross, R ....Dominion Bank
Ross, W. D ....Bank of Nova Scotia
Rothwell, H. L.....................Canadian Bank of Commerce
Rouleau, H ....Banque Ville Marie
Rousseau, J. A ....
Rowe, A. C ....Bank of British North America
Rowley, A. H ....Bank of Nova Scotia
Rowley, C. W ....Canadian Bank of Commerce
Rowley, H. H ....Bank of British North America
Rowley, O. R.......................Bank of British North America
Rudderham, H. E ....People's Bank of Halifax
Ruggles, J. W ....Bank of Nova Scotia
Rumsey, A..........................Imperial Bank of Canada
Rumsey, C. S.......................Traders Bank of Canada
Russell, J. A ....Halifax Banking Company
Russell, W..........................Bank of Hamilton
Rutland, H. G ....Bank of Hamilton
Ryan, J. W ....Union Bank of Halifax

St. Jean, E. G ....Merchants Bank of Canada
Sampson, A. R.....................Dominion Bank
Sanson, D. M ....Canadian Bank of Commerce
Saunders, A. L.....................Bank of Ottawa
Saunders, E. M ....Canadian Bank of Commerce
Savage, W. J.......................Canadian Bank of Commerce
Scarth, C. G ....Bank of Montreal
Scarth, J. F ....Imperial Bank of Canada
Schell, H. P ....Canadian Bank of Commerce
Schofield, G. A.....................Bank of New Brunswick
Scholfield, G. P....................Standard Bank of Canada
Scott, A.............................Canadian Bank of Commerce
Scott, Robert C ....Merchants Bank of Canada
Scott, W. B ....Merchants Bank of Canada
Secord, H. C........................Imperial Bank of Canada
Secord, H. C........................Canadian Bank of Commerce
Sewell, H. F. D ....Bank of British Columbia
Shadbolt, E. M ....Bank of Montreal
Shannon, E. G.....................Halifax Banking Company

Shannon, F. S	Bank of Ottawa
Shannon, W. T	Standard Bank of Canada
Sharpe, E. M	Merchants Bank of Canada
Sharpe, O. H	Bank of British North America
Sharpe, T. B	Bank of Ottawa
Shaw, H. B	Union Bank of Canada
Shaw, G. H	Quebec Bank
Shaw, Robert	Merchants Bank of Canada
Shepherd, D	Molsons Bank
Sherman, F. J	Merchants Bank of Halifax
Short, F. T	Bank British North America
Short, H. A	Eastern Townships Bank
Shreve, F. J	Merchants Bank of Canada
Shute, F	Merchants Bank of Halifax
Siegel, J	Union Bank of Canada
Simon, J	Bank of British Columbia
Simpson, A	Ontario Bank
Simpson, D	Bank of British North America
Sinter, Thos. S	Bank of British North America
Skeaff, Jno. Stewart	Bank of Toronto
Skelton, Arthur C	Bank of British North America
Skey, A. H	Bank of Hamilton
Skey, Wm. Russel	Molsons Bank
Slack, F. W	Eastern Townships Bank
Slack, N. H	Eastern Townships Bank
Sloane, B. O'R	Quebec Bank
Sloane, S. F	Dominion Bank
Sloane, W. P	Quebec Bank
Slocock, Edmund	Imperial Bank of Canada
Smart, R. H	Traders Bank of Canada
Smith, A. M	Merchants Bank of Canada
Smith, A. M	Merchants Bank of Halifax
Smith, A. V	Halifax Banking Company
Smith, H. Hubner	Molsons Bank
Smith, Chas. C	Quebec Bank
Smith, Chas. Graham	Eastern Townships Bank
Smith, Edward F	Merchants Bank of Halifax
Smith, Fred. W	Union Bank of Canada
Smith, G. Vernon	Bank of Ottawa
Smith, J. A	Canadian Bank of Commerce
Smith, J. C	Banque Ville Marie
Smith, Lyndon	Merchants Bank of Canada
Smith, Wm. H	Ontario Bank
Smith, W. Thompson	Traders Bank of Canada
Smythe, W. H	Merchants Bank of Canada
Somerville, P. H. W	Banque Ville Marie
Spencer, W. A	Merchants Bank of Halifax
Spencer, A. V	Merchants Bank of Canada
Spier, Wm	Eastern Townships Bank
Spink, G. A	Merchants Bank of Halifax
Spinney, E. G	Bank of British North America
Spragge, G. E	Imperial Bank of Canada
Sproat, Jno	Bank of Hamilton
Spurden, J. W	People's Bank of New Brunswick

Stanger, E.	Bank of British North America
Stavert, E. P.	Summerside Bank
Stavert, W. E	Bank of Nova Scotia
Steeves, A. A	Merchants Bank of Halifax
Stephens, C. A.	Bank of Toronto
Stephens, N. C.	Standard Bank of Canada
Stephens, W. S.	Molsons Bank
Sterns, G. W.	Halifax Banking Company
Sterns, S. S.	Bank of Nova Scotia
Steven, H. S.	Bank of Hamilton
Steven, J	Bank of British North America
Stevenson, B. B	Quebec Bank
Stevenson, H. H.	Molsons Bank
Stewart, C. J.	Merchants Bank of P.E.I.
Stewart, D. M	Merchants Bank of Halifax
Stewart, E. G	Union Bank of Canada
Stewart, H. Malcolm	Bank of British Columbia
Stewart, J. A.	Standard Bank of Canada
Stewart, J. D	Banque Ville Marie
Stewart, J. P. L	Union Bank of Halifax
Stewart, W. J.	Standard Bank of Canada
Stidston, J. H	Imperial Bank of Canada
Stikeman, H.	Bank of British North America
Stork, C. M	Canadian Bank of Commerce
Strathy, E. K	Union Bank of Canada
Strathy, Frank W.	Union Bank of Canada
Strathy, H. S.	Traders Bank of Canada
Strathy, Stuart	Traders Bank of Canada
Stratton, W. A.	Bank of Toronto
Strickland, C. N. S.	Union Bank of Halifax
Strickland, P. D. E.	Quebec Bank
Strong, F. W	Merchants Bank of Canada
Stuart, John H.	Bank of Hamilton
Sutherland, A. H.	Union Bank of Canada
Swaisland, G. W	Molsons Bank
Sweeny, C.	Bank of Montreal
Swinton, Rigby	Bank of Hamilton
Symons, W. W.	Union Bank of Halifax
Taillon, A. A.	Banque Nationale
Tait, A. Gordon	
Tait, T. J	Union Bank of Canada
Tapper, W. H	Bank of Nova Scotia
Tate, L. E.	Molsons Bank
Taylor, Frank W.	Merchants Bank of Halifax
Taylor, F. W.	Bank of Montreal
Taylor, Geo. A.	Merchants Bank of Halifax
Taylor, H. P.	Imperial Bank of Canada
Taylor, J	Bank of British North America
Taylor, J. A	Merchants Bank of Halifax
Taylor, Jas. G	Halifax Banking Company
Taylor, P. B	Bank of Ottawa
Taylor, R. F.	Merchants Bank of Canada
Thomas, J. E	Canadian Bank of Commerce

Thomas, Wm. S .... Bank of New Brunswick
Thompson, G. M .... Eastern Townships Bank
Thomson, F. R .... Imperial Bank of Canada
Thomson, G. A .... Halifax Banking Company
Thomson, H. A .... Molsons Bank
Thomson, W. H .... Imperial Bank of Canada
Thomson, R. G. O .... Imperial Bank of Canada
Thornton, A. S .... Canadian Bank of Commerce
Thornton, C. H .... Imperial Bank of Canada
Tibbits, A. R .... People's Bank of New Brunswick
Tod, J .... Bank of British North America
Tofield, H. A .... Merchants Bank of Canada
Torrance, W. B .... Merchants Bank of Halifax
Torry, L. E .... Merchants Bank of Halifax
Towers, A. S .... Bank of Toronto
Townshend, A. S .... Halifax Banking Company
Travers, R. G. H .... Bank of Montreal
Travers, W. R .... Merchants Bank of Canada
Trenholme, H. W .... Canadian Bank of Commerce
Trepanier, J .... Banque d'Hochelaga
Trigge, A. St. L .... Canadian Bank of Commerce
Tupper, W. E .... Union Bank of Halifax
Turnbull, J .... Bank of Hamilton
Turnbull, T. M .... Canadian Bank of Commerce
Turner, J. H .... Bank of Nova Scotia
Tytler, P. Boyd .... Merchants Bank of Canada

Vallee, P .... Banque Nationale
Van Felson, A. B .... People's Bank of Halifax
Veasey, G .... Union Bank of Canada
Verchere, A. G .... Canadian Bank of Commerce
Vessey, A. E .... Bank of Nova Scotia
Vibert, Philip .... Union Bank of Canada
Viets, G. R .... Bank of Nova Scotia
Von Atwood, H .... Bank of Nova Scotia
Von Cramer, Donald .... Merchants Bank of Halifax

Waddell, J. B .... Union Bank of Canada
Wadsworth, W. R .... Bank of Toronto
Wainwright, C. E .... Union Bank of Halifax
Wainwright, G. C .... Bank of Ottawa
Wainwright, J. R .... Molsons Bank
Walcot, C. W .... Merchants Bank of Canada
Walkem, H. C .... Bank of British North America
Walker, B. E .... Canadian Bank of Commerce
Walker, C .... Dominion Bank
Walker, J .... Imperial Bank of Canada
Walker, J .... Quebec Bank
Wall, W. J. E .... Banque Ville Marie
Wallace, James B .... Merchants Bank of Canada
Wallace, H. N .... Halifax Banking Company
Wallace, R. G .... Bank of Nova Scotia
Wallace, R. R .... Bank of Montreal
Wallace, W. S .... Bank of Hamilton

Wallace, Wm	Molsons Bank
Walsh, Ed.	Merchants Bank of Halifax
Walsh, J. W. B	Dominion Bank
Ward, A. H	Traders Bank of Canada
Ward, E. E	Molsons Bank
Warden, W. McC	Bank of Toronto
Waters, D	Bank of Nova Scotia
Watson, C. E	Union Bank of Canada
Watson, H. M	Bank of Hamilton
Watson, James	Traders Bank of Canada
Watson, J. B	Imperial Bank of Canada
Watson, J. W. G	Bank of Montreal
Watson, W. W	Bank of Nova Scotia
Waud, B. H	Molsons Bank
Waud, E. W	Molsons Bank
Webb, E. E	Union Bank of Canada
Webbe, R. J. M	Molsons Bank
Webster, H. C	Bank of Montreal
Wedd, G. M	Canadian Bank of Commerce
Wedd, John C	Dominion Bank
Wedd, L. E	Bank of Hamilton
Weir, W	Banque Ville Marie
Weir, W. A	Imperial Bank of Canada
Wemyss, J. M	Imperial Bank of Canada
Wethey, C. H	Imperial Bank of Canada
White, Chas	Imperial Bank of Canada
White, G. A	People's Bank of Halifax
White, H. R	People's Bank of Halifax
Wickson, Arthur	Merchants Bank of Canada
Wiggins, C. Malcolm	Ontario Bank
Wilkie, D. R	Imperial Bank of Canada
Wilkinson, R. G	Imperial Bank of Canada
Williams, A. E	Bank of Nova Scotia
Williams, Geo.	Bank British Columbia
Williams, H. F	Eastern Townships Bank
Williams, R. S	Canadian Bank of Commerce
Williams, S. P	Imperial Bank of Canada
Williams, Thomas	Bank of Toronto
Willis, J. M	Ontario Bank
Willmott, J. S	Merchants Bank of Canada
Wilmot, K. Eardley	Bank of Montreal
Wilson, Alex	Bank of Nova Scotia
Wilson, A. E	Bank of Montreal
Wilson, Geo	Imperial Bank of Canada
Wilson, G. H	Bank of Montreal
Wilson, G. M	Merchants Bank of Canada
Wilson, H B	Molsons Bank
Wilson, J. H	Imperial Bank of Canada
Wilson, J. H	Bank of Montreal
Winans, B. G	Merchants Bank of Halifax
Winlow, F. J	Traders Bank of Canada
Winslow, E. P	Bank of Montreal
Winslow, J. A	Bank of British North America
Winslow, F. E	Bank of Montreal

Winter, G. H	Bank of British North America
Woodburn, H. F	Merchants Bank of Halifax
Wonham, H. E. C	Bank of Montreal
Worrell, J. A.	Bank of Montreal
Wrenshall, C. M	Merchants Bank of Canada
Wright, J. E	Bank of Montreal
Wurster, Geo.	Merchants Bank of Canada
Wurtele, Carl F	Quebec Bank
Wurtele, D.	Merchants Bank of Canada
Wyld, Ernest A	Bank of British Columbia
Yeats, T. E	Ontario Bank
Young, C. A	People's Bank of Halifax
Young, F. W.	Union Bank of Canada
Young, R. B	Imperial Bank of Canada
Young, W. C.	Merchants Bank of Canada

The Canadian banker

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